

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1144th MEETING SESSION (2nd OF 2003)

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MONDAY
FEBRUARY 24, 2003

The Regular Meeting of the District of
Columbia Zoning Commission convened at 6:43 p.m. in
the Office of Zoning Hearing Room at 441 4th Street,
Northwest, Washington, D.C., Carol J. Mitten,
Chairperson, presiding.

COMMISSIONERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JAMES HANNAHAM	Commissioner
PETER G. MAY	Commissioner
JOHN G. PARSONS	Commissioner

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STAFF PRESENT:

ALBERTO BASTIDA, Secretary, ZC
SHARON SANCHEZ, Office of Zoning

OTHER AGENCY STAFF PRESENT:

ANDREW ALTMAN, Director, Office of Planning
ELLEN MCCARTHY, Deputy Director,
Office of Planning
DAVID MCGHETTIGAN, Office of Planning
JOEL LAWSON, Office of Planning
JENNIFER STEINGASSER, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN, Esq.

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I-N-D-E-X

Preliminary Matters 4

Hearing Action:

 Z.C. Case No. 03-03 6

 Z.C. Case No. 02-50 12

 Z.C. Case No. 03-06 20

Proposed Action:

 Z.C. Case No. 02-33 47

 Z.C. Case No. 01-02 58

Final Action:

 Z.C. Case No. 02-43 119

Consent Calendar:

 Z.C. Case No. 00-04 127

Correspondence:

 Motion to Reconsider Filed by Corcoran Mews
 Condominium Association, Z.C. Case No. 02-25 . . . 128

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P-R-O-C-E-E-D-I-N-G-S

6:43 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is February public meeting of the Zoning Commission of the District of Columbia. Today is Monday, February 24, 2003. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Peter May, John Parsons and James Hannaham.

Our agenda is available to you. It's on the table near the door. I just want to remind folks that at our public meetings we do not take testimony unless the Commission invites testimony. And I have a few preliminary matters that I'd like to begin with.

First is that the third case under Proposed Action, which is Zoning Commission Case Number 02-17, 5401 Western Avenue, decision-making on that has been postponed for two weeks until our March meeting, March 10, which will be at 1:30, our usual time.

The second is that the fourth case under Proposed Action, which is Zoning Commission Case Number 02-32, the Georgetown Performing Arts Center, is more appropriately under Final Action because we are using the BZA rules, so it will be the first case

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1 under Final Action.

2 The minutes -- since we have a lot to
3 cover tonight, the minutes and the Office of Planning
4 Status Report will be moved to the end of our agenda.

5 And at the end of our agenda, we will also be adding
6 an item for the election of officers. February is the
7 month that the Zoning Commission elects officers.

8 And then, finally, we'd like to take up a
9 preliminary matter related to Zoning Commission Case
10 Number 02-26, which is the George Washington
11 University Health and Wellness Center. And that
12 preliminary matter relates to Condition 9 of the
13 Campus Plan order. There is a report due. The next
14 report due on the status of compliance with Condition
15 9 is due in a matter of days, and that would be
16 February 28, 2003.

17 And I would recommend to the Commission
18 that we wait to receive the Applicant's report on the
19 status of their compliance with Condition 9 in as much
20 as there has been an order or an opinion issued by the
21 U.S. Court of Appeals reversing the decisions of Judge
22 Overdorfer and allowing the Condition 9 to be in
23 force. And also that the interpretation of letter D,
24 number 1, the number of full-time undergraduate
25 students then enrolled be interpreted as enrolled as

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1 of the date that the report is made. Any comments
2 from the Commission?

3 So we would then take this up for
4 decision-making at our March 10 meeting, in two weeks.

5 We would receive the report on Condition 9 and the
6 number of students enrolled would be as of the date of
7 the report rather than as of the beginning of the
8 semester.

9 VICE CHAIRMAN HOOD: I would concur, Madam
10 Chair. I think if we wait on the report I think we'll
11 be better informed to make a decision.

12 CHAIRPERSON MITTEN: Thank you. So can we
13 do that by general consensus that we will postpone
14 that for decision-making until we receive the February
15 28, 2003 status report? All right.

16 So then we'll move -- skipping over the
17 minutes and the status report for the time being,
18 we'll then move to the cases for hearing action, the
19 first one being Zoning Commission Number 03-03, which
20 is the second stage PUD application for the East
21 Capitol dwellings. And I'll turn to Mr. McGhettigan
22 from the Office of Planning.

23 MR. MCGHETTIGAN: Thank you, Madam Chair.
24 I'm Dave McGhettigan from the Office of Planning.
25 This is a second-stage PUD of a two-stage PUD. Stage

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1 I was approved. And it is Case 02-05. We are
2 recommending that it be set down, being consistent
3 with the first stage approval, and if you have an
4 questions, we would like to answer them.

5 CHAIRPERSON MITTEN: That was a nice brief
6 report there, Mr. McGhettigan. Any questions for Mr.
7 McGhettigan on the recommendation for setdown?

8 VICE CHAIRMAN HOOD: Madam Chair, I would
9 just ask that OP and the Applicant when they come down
10 -- if it's set down for a hearing, we have a fully
11 detailed plan of this acquiring of homes. I would
12 like to see what the detailed plan for the acquisition
13 of the houses in which the Applicant is trying to
14 acquire.

15 CHAIRPERSON MITTEN: I think that's fine,
16 and I think actually if there are properties included
17 in the application that the Applicant does not own, I
18 think the owners of the property have to agree to
19 participate in the application. Am I correct about
20 that, Mr. Bastida?

21 SECRETARY BASTIDA: You are correct.

22 CHAIRPERSON MITTEN: All right. So they
23 would have to agree to participate, so that's one way
24 to get at the --

25 VICE CHAIRMAN HOOD: Right. Yes, I agree,

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1 but I just want to make sure that a detailed plan is
2 at least provided to us so we can make our decisions.

3 CHAIRPERSON MITTEN: Certainly.

4 VICE CHAIRMAN HOOD: Thank you.

5 CHAIRPERSON MITTEN: And, Mr. McGhettigan,
6 can you give us any information about the status of
7 the commercial component, how that's coming along?

8 MR. MCGHETTIGAN: No. They're still
9 trying to pursue an agreement with a grocery store,
10 and there's no further information at this time on
11 that.

12 CHAIRPERSON MITTEN: One of the things
13 that we talked about when we heard the first stage
14 application, and it doesn't seem to have changed in
15 the site and landscape plan that's in the application
16 for the second stage, is the relationship between the
17 driveways that would serve the commercial component,
18 which I know hasn't been determined precisely, and the
19 relationship of those driveways to the relationship of
20 the driveways from the multi-family site on the south
21 side of East Capitol Street. And that we wouldn't
22 want to be creating an adverse traffic situation where
23 people would be trying to get all the way across East
24 Capitol Street by turning right out of the multi-
25 family site going east on East Capitol and then

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1 immediately trying to make a left into the commercial
2 center.

3 So I just want to bring that up again,
4 because I wouldn't want to be making decision about
5 the site plan for the multi-family building and then
6 end up with some kind of conflicting situation ont eh
7 commercial component. So I just raise that again. We
8 talked about it in the first stage application. Any
9 other questions or comments? Mr. May?

10 COMMISSIONER MAY: Yes. Thank you. I
11 thought when Commissioner Hood mentioned the need for
12 more detailed plans, I thought he was actually talking
13 about better site plans. This particular portion of
14 the -- we've seen a lot of information about this
15 particular development, but what I saw in the material
16 that we received at this point I won't say it didn't
17 have enough detail, it seemed to have too much detail
18 in certain areas. I mean the part that I understood
19 the best was the sediment control diagrams. And if
20 that's the thing that I understand the best, it's not
21 doing the job.

22 So I understand that the basic site plan
23 probably hasn't changed significantly, although there
24 are some significant changes to the multi-family
25 building in terms of how it's situated on the site and

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1 there's changes to the driveway and things like that,
2 but it was very difficult to reacclimate with this
3 particular set of drawings, and I don't think it
4 indicates that the work hasn't been done, it probably
5 has, it just wasn't apparent in what I had. And we
6 had a whole series of complicated drawings with match
7 lines and overlays of all sorts of information that's
8 not really necessary for us here, and I would hope
9 that we get a clearer set of information when we
10 actually get to the hearing point.

11 I also wanted to register a particular
12 concern that I have about the relief that may be
13 requested with regard to side yards. Not that we
14 would not be amenable to it but I as a result of
15 recent BZA decisions, I'm particularly concerned about
16 side yard questions and how the side yards in a
17 situation where they are going to be a lot of side
18 yards, given that there are a lot of two-family
19 dwellings or semi-detached dwellings.

20 And the last thing is that the multi-
21 family apartment building itself has changed quite
22 significantly, and I think that there was a
23 significant effort made to address that corner and the
24 importance of that corner. And I think it was
25 positive in that way, but I think that the net result

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1 from the attempts to sort of deal with the massing and
2 the overall extraordinary length of the building are
3 not particularly successful. And what we have is sort
4 of a relentless series of bays that don't give you the
5 sort of breakup in mass that would sort of punctuate
6 the site better. We have a lot of little breaks along
7 the way, and in fact the massing of the original
8 building is probably superior, except at that corner.

9 So advice I would pass on.

10 CHAIRPERSON MITTEN: Thank you,. Anyone
11 else? All right. We have a recommendation from the
12 Office of Planning to set down Zoning Commission Case
13 Number 03-03 for public hearing, and I so move.

14 VICE CHAIRMAN HOOD: Second.

15 CHAIRPERSON MITTEN: Any further
16 discussion? All those in favor, please say aye.
17 Those opposed please say no.

18 (Commission members vote.)

19 CHAIRPERSON MITTEN: Mr. Sanchez, would
20 you record the vote?

21 MS. SANCHEZ: I'm sorry, I didn't -- was
22 that --

23 CHAIRPERSON MITTEN: It was -- I made the
24 motion, Mr. Hood seconded it.

25 MS. SANCHEZ: And Mr. Hood seconded it,

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1 yes. Staff would record the vote five to zero to
2 zero. Motion was made by Commissioner Mitten,
3 seconded by Commissioner Hood and in favor by
4 Commissioners Hanniham, May and Parsons.

5 CHAIRPERSON MITTEN: Thank you. And this
6 will be a contested case.

7 Next is Zoning Commission Case Number 02-
8 50, which is a request for consolidated review of Map
9 Amendment, PUD-related Map Amendment and plan for
10 condominiums at the St. Luke's United Methodist
11 Church. And Ms. Brown-Roberts is here to make a
12 presentation.

13 MS. BROWN-ROBERTS: Good evening, Madam
14 Chairman and members of the Commission. The Applicant
15 seeks approval for a Map Amendment and consolidated
16 PUD for the development of a residential building with
17 44 units. The site is in the Naval Observatory
18 Precinct Overlay District with the R-1-B District as
19 base zoning. The Applicant requests that the property
20 be rezoned to the R-5-B District to accommodate the
21 proposed development. A portion of the subject
22 property is currently developed with the St. Luke's
23 United Methodist Church.

24 The Naval Observatory Precinct District
25 was established to promote the public health, safety

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1 and general welfare for land adjacent to or in close
2 proximity to the highly sensitive and historically
3 important Naval Observatory. The R-1-B District is
4 designed to protect quiet residential areas developed
5 with one-family detached in adjoining vacant areas
6 likely to be developed for those purposes.

7 The proposed development of the site is
8 not contrary to the purposes of the Naval Observatory
9 overlay. The proposed R-5-B District permits
10 flexibility of design in all types of urban
11 residential developments at a moderate height and
12 density. The R-5-B District will allow the
13 development to be at a scale that does not negatively
14 impact the existing residences and is consistent with
15 the intensity of the adjacent neighborhood.

16 The generalized land use map recommends a
17 subject site for low-density residential with single-
18 family detached and semi-detached housing as the
19 predominant use. Section 24-3 of the zoning
20 regulations require that the application is not
21 inconsistent with the Comprehensive Plan. The
22 proposed moderate-density residential use is not
23 inconsistent with the map, which outlines the
24 predominant uses for the area but does not preclude
25 the existence of other residential unit types if

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1 appropriate.

2 Single-family detached units are
3 inappropriate for this location based on the fact that
4 it is a site oriented to Wisconsin Avenue and the
5 surrounding uses. The overall density proposed is
6 only marginally more than would be permissible as a
7 matter of right under the zoning category that
8 corresponds to low density and land use designation.

9 The property is the only quadrant of the
10 Wisconsin Avenue-Calvert Street intersection that is
11 not intensely developed. This location is more
12 appropriate for multi-unit building that will be more
13 compatible to adjacent retail office and high-rise
14 residential uses at this intersection.

15 Based on the information provided, the
16 Office of Planning believes that the project will not
17 be negatively impacted with the neighborhood
18 community. The proposed PUD site is relatively
19 underdeveloped, and this PUD approach provides a
20 beneficial site planning and design flexibility that
21 this project requires to be incorporated smoothly into
22 a community that is comprised of a mixture of uses,
23 such as single family, detached houses, apartments,
24 offices, retail and hotel.

25 The Applicant has had a number of meetings

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1 and discussions with various community organizations,
2 such as the Glover Park Citizens' Association, the
3 Massachusetts Avenue Heights Citizens' Association,
4 ANC-3C and ANC-3B, to get their input and comments on
5 the proposed development. These organizations
6 generally support the application.

7 The Office of Planning believes that the
8 proposed PUD is not inconsistent with the requirements
9 of the zoning regulations and elements of the
10 Comprehensive Plan and therefore recommends that the
11 application for the Map Amendment and consolidated PUD
12 be set down for public hearing. Thank you, Madam
13 Chairman.

14 CHAIRPERSON MITTEN: Thank you. Any
15 questions for Ms. Brown-Roberts? Any questions? Mr.
16 May?

17 COMMISSIONER MAY: Yes. I was curious
18 about the affordable housing component or the \$150,000
19 that would be put toward the housing production trust
20 fund. What discussions have led to that, and have you
21 tried to do anything more aggressive such as has been
22 done in other recent PUDs with regard to affordable
23 housing?

24 MS. BROWN-ROBERTS: I think that was
25 something that was offered by the Applicant. We are

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1 still reviewing that to make sure that we are
2 satisfied with that amount of money. I think one of
3 the things that has to be taken into consideration is
4 the Church's ability pay more into the trust fund, but
5 as I said, we are looking further into that.

6 COMMISSIONER MAY: What I was really
7 curious about was whether there was any conversation
8 or you hope to have any conversation about actually
9 incorporating some affordable housing element or
10 pushing for that, as has been done in other PUDs?

11 CHAIRPERSON MITTEN: I think you mean
12 onsite, right?

13 COMMISSIONER MAY: Onsite.

14 MS. BROWN-ROBERTS: Onsite. No, we did
15 not address that.

16 MS. MCCARTHY: We have not addressed that
17 directly. That's still an option. The package that
18 was developed by the Applicants was developed after
19 months of meeting with the neighborhood. And so I
20 think we would need to include the larger group in
21 that discussion.

22 COMMISSIONER MAY: Okay. I just thought
23 it would be worth asking about.

24 The other question I have, or maybe it's
25 not really a question, maybe it's a statement, looking

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1 at the design of the buildings themselves, the
2 elevations in particular, it's very difficult to
3 imagine a building with that level of ornate
4 decoration on that particular corner, given how little
5 precedent there is for what almost looks like embassy
6 level of classical detailing applied to it.

7 So I'm wondering, and I guess this would
8 be a question for the Applicant, what's driving the
9 design of this in this particular direction, because
10 it certainly is possible to have a detailed
11 architecture and a rich architecture without going so
12 far in this particular direction because it seems
13 somewhat out of place for that neighborhood.

14 MS. MCCARTHY: The design of the facility
15 was also a subject of considerable discussion with the
16 community, and they had very distinct desires for how
17 they wanted the project to look, which was of a more
18 residential scale with that kind of quality of
19 materials. It is also katty-corner from the Russian
20 Embassy, so it's not completely out of context if you
21 were talking about embassy level of detail.

22 COMMISSIONER MAY: Yes. I guess I was
23 thinking more Bozart's style of embassy detailing than
24 what we have across the street.

25 MS. MCCARTHY: Well, we certainly wouldn't

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1 want to have it match the union of local operating --
2 the local union operating engineers across the street,
3 but, yes.

4 COMMISSIONER MAY: Oh, okay. All right.
5 Well, it just --

6 MS. MCCARTHY: Is there a particular style
7 that you were thinking was appropriate?

8 COMMISSIONER MAY: Well, no, I don't think
9 that it has to be a particular style. It just seemed
10 to me that given the size of the building and the
11 particular elements that have been applied to the
12 facade, that there's an awful lot of attention has
13 gone into a very detailed, very intricate architecture
14 which from a distance in this picture looks somewhat
15 fitting if not exceptional, but when you look at the
16 elevations and you get a look at it up close, it's a
17 -- there's a lot of classical detailing that seems to
18 be applied without a real sense of the overall scale
19 of the building, and it doesn't seem to relate to
20 anything within the context.

21 And I'm struggling trying to see -- I mean
22 the only thing I can think of that are like this are
23 some stretches of Massachusetts Avenue where there's a
24 lot of Palladium windows and intricate roof cornices
25 and balustrades on the roof, things like that, which

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1 are showing up here without any apparent reason. And
2 now if there is an apparent reason, we'll see that at
3 the hearing, obviously, but it just seems like it's a
4 little overdone. And I've talked way too long.

5 MS. MCCARTHY: Right. Well, I know the
6 Palladium windows were specifically one of the items
7 that were put in there because the neighborhood was
8 looking for something that looked -- that made it look
9 more like individual townhouses, so that was an
10 element to kind of disguise the fact that it's really
11 an apartment building at that point.

12 COMMISSIONER MAY: Okay.

13 MS. MCCARTHY: But we can certainly
14 address that further.

15 COMMISSIONER MAY: Yes. I think that that
16 particular idea has to be developed a little bit more,
17 because I'm not sure that it -- you've got Palladium
18 windows that are sort of squished between bay fronts.
19 It looks funny. Thanks.

20 CHAIRPERSON MITTEN: Thank you, Mr. May.
21 Anyone else? Questions, comments? All right. We
22 have a recommendation from the Office of Planning to
23 set down Zoning Commission Case Number 02-50, a PUD
24 for St. Luke's Condominium, and I so move.

25 COMMISSIONER PARSONS: Second.

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1 CHAIRPERSON MITTEN: Any further
2 discussion? All those in favor please say aye. Those
3 opposed please say no.

4 (Commission members vote.)

5 CHAIRPERSON MITTEN: Ms. Sanchez?

6 MS. SANCHEZ: Yes. Staff would record the
7 vote five to zero to zero. Commissioner Mitten
8 moving, Commissioner Parsons seconding, Commissioners
9 Hannaham, May and Hood in favor.

10 CHAIRPERSON MITTEN: Thank you. And this
11 will also be a contested case.

12 Then the third item under Hearing Action
13 is Zoning Commission Number 03-06, which is a very
14 important and exciting proposal. Ms. McCarthy, are
15 you going to make the presentation for us?

16 MS. MCCARTHY: I think Mr. Altman wanted
17 to make a few initial remarks, and then Mr. Lawson is
18 going to present the bulk of the proposed zoning.

19 DIRECTOR ALTMAN: Good evening, members of
20 the Commission. This is the setdown report. Office
21 of Planning is recommending that the Zoning Commission
22 set down for public hearing a petition from the
23 General Services Administration for proposed Map
24 Amendment for the Southeast Federal Center site for
25 initial zoning of CR R-5-E/R-5-D and the WO and a text

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1 amendment to create a new Southeast Federal Center
2 Overlay District. I'll just make a couple of remarks,
3 and then Joel is prepared to walk through this if the
4 Commission has questions.

5 But this is really, as GSA has said in
6 their petition, truly a milestone petition, and it
7 does represent many years. In fact, Commissioner
8 Parsons knows we started this about three years ago
9 with a workshop -- I think you have that in your --
10 you may have that in your packet -- a workshop that
11 GSA and the City sponsored to look at the future of
12 this Southeast Federal Center and the near Southeast
13 neighborhood, and that has continued in partnership
14 between GSA and the City over the past three years.

15 I've been working through the Anacostia
16 Waterfront Initiative to bring to you today what I
17 think is really an historic moment in zoning history
18 where the GSA, on behalf of the Federal Government, is
19 bringing forward a zoning application for a site that
20 is currently unzoned in order to create a mixed use
21 waterfront on the neighborhood.

22 And we can't underestimate, I think, how
23 significant this is that this site, which had been
24 looked previously as an all-office, federal office
25 complex is now being looked at to create a vibrant

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1 waterfront, including significant residential
2 development as well as the WO Zone for allowing for a
3 waterfront park, which will be, I think, one of the
4 first parks along the waterfront in many, many years
5 to be created on the west side of the waterfront. And
6 I think it's very important in terms of our overall
7 efforts in the City.

8 A couple things I'd like to say about it.

9 This site, as you know, as identified in the near
10 Southeast plan that's before you, is one of the few if
11 not say only one of maybe two or three sites on the
12 entire waterfront where you actually have the
13 possibility to create a high-density waterfront
14 neighborhood. This and the Southwest waterfront and
15 possibly Reservation 13 really are the three
16 significant sites along with, we'll hear later,
17 Florida Rock where you really have this opportunity to
18 have a high-density waterfront neighborhood, to have
19 residential on the waterfront and to create a park.
20 And that park allows the opportunity to have the
21 heights and the densities that are necessary in order
22 to achieve a really vital waterfront.

23 So I'll have Joel Lawson walk through this
24 a little bit, but it's really a very significant
25 application, a lot of hard work over three years.

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1 We're incredibly encouraged that GSA has come forward
2 with this. The timing was very important as they're
3 going pursuant to the Public/Private Partnership Act
4 that Congresswoman Eleanor Holmes-Norton had drafted
5 and was signed into law by former President Clinton.
6 This really does allow for them to realize the
7 development potential. They're going through a
8 Request for Proposals process, and so the timing of
9 this was critical to bring this before you today, as
10 it will give it significant guidance in that process
11 and will really help to realize this vision that was
12 really started over three years ago in joint GSA/City
13 process.

14 So we're very supportive of this and
15 recommend setdown. And with that, I'll turn to Joel
16 Lawson who may walk through a little bit of what's
17 been proposed, and then we'll take questions on this.

18 MR. LAWSON: Madam Chair, members of the
19 Commission, the petition by General Services
20 Administration is to establish zoning for this 44-acre
21 site, called the Southeast Federal Center. It's
22 generally bound by M Street Southeast to the north,
23 1st Street Southeast to the west, the Anacostia River
24 to the south and the Washington Navy Yard to the east.

25 The Southeast Federal Center site is part of the

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1 rapidly changing near Southeast area and is an
2 integral component of the Anacostia River Waterfront.

3 This petition, as my boss just mentioned,
4 represents a culmination of three years of intensive
5 discussion between GSA and the Office of Planning on
6 how best to plan for this land resource to meet GSA
7 and district objectives for the site and for the City,
8 to ensure that it reinforces the historic fabric of
9 the district, provides vital view corridors and access
10 to the waterfront and permits the create of a high-
11 density, mixed use neighborhood with new residential,
12 office, retail and cultural development as well as a
13 significant new park along the waterfront.

14 The proposed zoning, which is intended to
15 assist in the realization of this vision, includes CR
16 along and adjacent to M Street, which would permit
17 medium- to high-density mixed office, retail and
18 residential development; R-5-E in the center of the
19 site, which would permit high-density residential
20 development with support retail; R-5-D on one parcel
21 to provide lower-density residential development as a
22 transition between the higher density residential and
23 the narrower portion of the waterfront park; and the
24 new WO Zone, which is currently under consideration by
25 the Zoning Commission along the public waterfront

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1 area, which would permit park and open space as well
2 as low-density waterfront-oriented retail recreational
3 and cultural uses. In our report and in the vision,
4 the waterfront park area and the proposed WO Zone area
5 are identical.

6 The new Southeast Federal Center overlay,
7 similar to the recently approved Capitol Gateway
8 Overlay District directly to the west, would augment
9 the zoning by requiring select forms of retail along
10 major streets. This is intended to serve the large
11 new resident worker population as well as to provide
12 streetscape amenity for visitors passing through to
13 the waterfront, permit additional height on CR and R-
14 5-E zone parcels, to conform to heights of surrounding
15 development and to provide additional design
16 flexibility and opportunities for open space around
17 buildings, require special exception approval of all
18 buildings fronting onto M Street or facing directly
19 onto the waterfront park.

20 The WO Zone would require special
21 exemption approval of virtually all buildings or
22 structures and most uses other than park within the
23 waterfront park. It would establish -- the overlay
24 would establish an area in the northeast corner of the
25 WO Zone section of the parcel which could receive

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1 waterfront-oriented retail, arts development potential
2 up to the maximum FAR permitted for the entire WO zone
3 section of land.

4 The overlay would permit combined lot
5 development within the CR Zone District. And,
6 finally, it would permit the transfer from any CR Zone
7 parcel of up to 0.5 FAR commercial development to the
8 site at the intersection of M Street, Southeast and
9 New Jersey Avenue, which is Parcel A on the
10 illustrative plan.

11 The recommended zoning will support the
12 agreed to vision for the Southeast Federal Center site
13 and the near Southeast area by providing for the
14 desired mixed of uses at an appropriate density and
15 height. A relatively high density form of development
16 is imperative in realizing a critical mass of housing
17 on the waterfront and in the near Southeast area.
18 This is one of a few immediately available parcels
19 where this form of urban neighborhood and a
20 significant waterfront park can be accommodated. The
21 density of development will both permit and activate
22 the waterfront park, while the park allows for the
23 density and the height by providing significant
24 setbacks from the waterfront and providing a highly
25 desirable form of immediately available open space for

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1 new Southeast Federal Center residents and workers.
2 Heights and densities, as proposed, also relate to
3 those permitted on adjacent parcels, and the extension
4 of the surrounding neighborhood streets to and through
5 the site will provide amenity to all Southeast area
6 and District residents by providing unprecedented
7 public access to a destination, Anacostia Waterfront
8 Park.

9 In summary, the proposed zoning is the
10 product of thoughtful, deliberate planning, protracted
11 and valuable discussions with GSA and community
12 participation through near Southeast and AWI
13 workshops. The zoning would permit the realization of
14 a critical mass of housing on the waterfront in the
15 near Southeast area and citywide. The waterfront park
16 will provide a vital and unique amenity for these
17 residents as well as for office workers and visitors
18 to the site and the City. The Southeast Federal
19 Center Overlay would provide a balance of design
20 flexibility with certainty of the overall form and
21 character for this new neighborhood, and it would be a
22 vital tool in the creation of a vibrant public
23 waterfront park and its integration back into the
24 District.

25 OP feels that the proposing zoning are

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1 consistent with the Comprehensive Plan. The Southeast
2 Federal Center Illustrative Plan, the Southeast
3 Federal Center RFQ, the AWI and the near Southeast
4 area planning initiatives. OP recommends that the
5 Zoning Map Amendment and Overlay be set down for
6 public hearing, and we're available to answer
7 questions. Thank you.

8 CHAIRPERSON MITTEN: Thank you, Mr. Lawson
9 and Mr. Altman. Questions from the Commission, or
10 comments? Anybody want to start?

11 COMMISSIONER PARSONS: Sure.

12 CHAIRPERSON MITTEN: Mr. Parsons.

13 COMMISSIONER PARSONS: Well,
14 congratulations to all. I'm reflecting back on a GSA
15 plan of the mid-80s -- oh, I'd better not. This is a
16 vast improvement. Mr. Altman, I'm trying to grasp the
17 context between this plan here, which is the near
18 Southeast draft schematic, and the proposals made
19 here. In this schematic, New Jersey Avenue penetrates
20 through the site, a park surrounds the WASA Sewage
21 Pumping Station, but this zoning doesn't seem to
22 reflect that; that is, the waterfront open space zone
23 could, if I look at the plan in the near Southeast,
24 could extend all the way through the WASA parking lot
25 and possibly up New Jersey Avenue. Was that

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1 contemplated at all?

2 DIRECTOR ALTMAN: Well, I think the
3 primary objective in the near Southeast plan and in
4 the work we've been doing with GSA has been the
5 creation of this roughly five-acre park where the WO
6 Zone is here. And in particular what you can see is
7 that we've identified the area even further defined
8 this so that the WO has an area which is the buildable
9 area, which is between the R-5-D and an existing
10 structure, and then the area that would be really pure
11 open space. That was sort of the principle goal.

12 In terms of extending up to the WASA site
13 and to New Jersey Avenue, I think our notion was more
14 that has to do with how it's landscaped in terms of
15 New Jersey Avenue. The WASA site is really one of --
16 in front of the WASA site sort of remains to be worked
17 out with WASA. I mean a lot will depend -- as you
18 know, at one time they had proposals to do some
19 construction in front of their building as part of
20 their overall restoration of that project and
21 providing other sort of filtration systems. I don't
22 think that's going to happen. So there's still a
23 possibility to work with WASA in terms of creating
24 some more open space on their property, and we've
25 initiated discussions with them. So I think it's been

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1 consistent with the efforts we've been trying to
2 accomplish.

3 COMMISSIONER PARSONS: So I mean this
4 wouldn't result in W2 development of the WASA parking
5 lot. I mean you're pretty confident that this urban
6 design framework, which calls for a park there where
7 the label WASA exists is really in our future?

8 DIRECTOR ALTMAN: Well, I wouldn't say
9 I'm confident about that, I mean, because it really
10 rests -- the area you're speaking of is in front of
11 the existing WASA building.

12 COMMISSIONER PARSONS: Where is says WASA,
13 right there.

14 DIRECTOR ALTMAN: Right.

15 COMMISSIONER PARSONS: On this Illustrious
16 Site Plan it calls for a park.

17 DIRECTOR ALTMAN: Yes. I wouldn't say
18 we're confident, but I'd say that -- yes, that's not
19 -- well, yes, I mean that's right. That's not a part
20 of this zoning application, but it is something that
21 we'd be working on with WASA, and we're obviously -- I
22 think all parties would like to see WASA do that, and
23 we're working to achieve that.

24 COMMISSIONER PARSONS: Now, there seems to
25 be an area that is not zoned here. It's on the far

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1 right side of the property, inside the green line.
2 I've got a pet peeve, there's a couple of cooling
3 towers there that I wish never were built. But,
4 anyway, and this is the steam plant or some kind of
5 generating station. Are you familiar with that, that
6 long shed building?

7 DIRECTOR ALTMAN: Yes.

8 COMMISSIONER PARSONS: It doesn't seem to
9 have any zoning applied to it in this instance.

10 MR. LAWSON: My understanding is that that
11 portion of land is to remain in Federal Government
12 control, so it would remain unzoned.

13 COMMISSIONER PARSONS: Oh, oh. That's --
14 so maybe we should change this boundary to go around
15 it or something. You see the green line that goes
16 around the map? It implies that that's within this
17 area. It's just a detail. That's my only questions.
18 Thanks.

19 CHAIRPERSON MITTEN: Thank you, Mr.
20 Parsons. I think your question raises sort of a
21 technical point, and we'll get to some of perhaps
22 really technical stuff at the end. But I've been told
23 that there will be -- that has not yet been provided
24 to us, that there will be a meets and bound
25 description provided for the various zoning

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1 categories, so then it would be more clear what was in
2 a zoning category being proposed and what was not. Is
3 my understanding correct on that?

4 DIRECTOR ALTMAN: I was just looking to
5 the GSA Counsel if that's correct.

6 MS. DWYER: For the record, Maureen Dwyer
7 with the law firm of Shaw Pittman. That area is --
8 there should be a line that is at the southern
9 boundary of the R-5-D that goes across, because that
10 area that consists of the boiling plant and cooling
11 tower is not going to be proposed for any zoning or
12 development. So that will just remain unzoned in
13 Federal ownership.

14 CHAIRPERSON MITTEN: Right. I was seeking
15 confirmation of the fact that we would be provided --
16 in order to be advertised with --

17 MS. DWYER: A meets and bounds of all the
18 properties, yes, you will.

19 CHAIRPERSON MITTEN: Yes. Yes. Okay.
20 Thank you. Thanks. All right. Anyone else have
21 questions before we get into some of the more
22 technical questions maybe? I mean this is terrific
23 and I'm really pleased to be on the Commission at a
24 time when we're deciding such a momentous case as
25 this. I wanted to ask about some of the provisions

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1 that you have incorporated on those maps regarding the
2 WO Zone, because I'm not sure that I completely
3 understand the intent.

4 And maybe if I could just point you to one
5 paragraph that's causing me a particular problem,
6 which is 1805.6. It says, "New development is to be
7 concentrated in but not limited to the WO building
8 area. The balance of the property in the WO Zone is
9 considered the waterfront park in which development
10 consistent with the WO Zone is permitted." That kind
11 of implies that development that's not necessarily
12 consistent with the WO Zone is permitted in the WO
13 building area. So I'm trying to understand what do
14 you envision will happen in the WO building area? And
15 if it's something that's not really consistent with
16 the WO Zone, shouldn't it be zoned something else?

17 MR. LAWSON: I'll take a stab at that.

18 CHAIRPERSON MITTEN: Okay.

19 MR. LAWSON: The WO Zone is intended to be
20 principally an open space zone, but it does allow a
21 low-density of development. The WO Zone portion of
22 land, which is also the waterfront park, is about five
23 acres, so even at the low density of 0.5 FAR, that
24 amounts to a fairly significant amount of development,
25 somewhere in the neighborhood of 100,000 square feet

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1 and change.

2 What the intention is is that that
3 development -- oh, and that development can be retail
4 or recreational or cultural form of development. The
5 intention is that the development would be
6 concentrated within the WO buildable area to provide
7 sort of a nub of retailer or possibly an area where a
8 significant cultural proposal could come forward. The
9 rest of the area would remain relatively undeveloped,
10 although forms of development that are waterfront-
11 dependent or would serve the waterfront park may also
12 be permitted.

13 Now, in the WO Zone, any of these uses
14 require special exception approval. So whatever is
15 proposed in this area would be coming to the District
16 for review and approval.

17 MS. MCCARTHY: And I think specifically in
18 this instance I believe that the intent of 1805.6 was
19 to suggest that the bulk of the development would be
20 concentrated around the historic building and the area
21 around there that's denoted in the WO buildable area,
22 but that additional development of the type that's
23 permitted in WO, such as ticket booths for tour boats
24 or very minimal types of development could also be
25 permitted in other instances. All of that development

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1 in WO, whether it's the somewhat larger development of
2 the 100,000 square feet or whether it's the smaller
3 developments like ticket booths or wharfs or public
4 restrooms, all of it would have to occur by special
5 exception, and we would anticipate that all of it
6 would be consistent with the WO Zone.

7 CHAIRPERSON MITTEN: Okay. Let me just --
8 I heard everything you said. In the WO buildable
9 area, are you anticipating that that area, absent
10 whatever density is associated with existing
11 structures, that that will perhaps exceed 0.5 FAR
12 because presumably you're loading up density from
13 elsewhere in the WO Zone to that site? That's what
14 I'm not quite understanding. And in fact are you
15 anticipating that it will exceed 40 feet in height?

16 MR. LAWSON: With the exception of the
17 existing historic building, the maximum FAR permitted
18 within the WO Zone would be 0.5. And that would or
19 could be concentrated within that one area. So 0.5
20 would be the maximum that would be permitted in the
21 zone as a whole. The height would be limited to 40
22 feet, and we wouldn't anticipate anything higher than
23 that.

24 CHAIRPERSON MITTEN: Okay. So in the
25 buildable area it's possible that whatever amount of

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1 FAR you could cram into 40 feet might end up there?

2 Is that what --

3 MR. LAWSON: Yes. That's correct.

4 DIRECTOR ALTMAN: It could be. I mean the
5 intent was -- the reason this is important, and we
6 actually spent a pretty fair amount of time with
7 General Services Administration on this, is that that
8 site, the buildable area site, the reason for wanting
9 to concentrate it there is it's the one site where
10 something sort of special to the waterfront could be
11 created, which was sort of the intent of the WO. So,
12 for example, if you were to have a Navy museum or an
13 annex to the Navy museum, that's where you could
14 accommodate that. And by doing that, what we wanted
15 to do is take the pressure off the remainder of the WO
16 which we really saw as much more of an open space then
17 buildable. So what we've done is basically taken the
18 WO and just further refined it and done exactly what
19 you said.

20 CHAIRPERSON MITTEN: I think that some of
21 the language in here is an expression of intent, and
22 what we really want the text to say is we just want
23 the text to allow the intent to be realized. And
24 there might be a way to simplify the language rather
25 than -- I mean, for instance, talking about a park, we

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1 can't create a park per se. It's true that WO Zone is
2 conducive to creating a park, because it doesn't
3 preclude development and so forth and everybody's idea
4 about what a park is is probably different too.
5 That's probably not what we want to have in the text,
6 but we just want to make sure that there's the
7 opportunity to sort of cluster the development in the
8 buildable area, as you say.

9 So there's probably a few things in here
10 that you might need to work with Corporation Counsel
11 just refining some of the language to make sure that
12 it conveys the meaning that you intend.

13 DIRECTOR ALTMAN: I would just add to
14 that, though, I think. In terms of intent, I think we
15 do want to make sure we're clear, and we've spent a
16 lot of time and work with GSA on this, that the area
17 that's been identified as the buildable area and the
18 area where the -- that's sort of the more open space
19 area, but I think we do want to be somewhat specific
20 about the differentiation between those. So it's not
21 just allowing the opportunity. I think we do, in
22 terms of the development pattern, want to ensure that
23 you do have an area that can be developed as a park
24 but where there wouldn't be as much buildable. And so
25 I think we could work with them on how to clarify that

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1 --

2 CHAIRPERSON MITTEN: Yes. That's fine.

3 DIRECTOR ALTMAN: -- since that was the
4 intent.

5 COMMISSIONER PARSONS: Madam Chair, could
6 I weigh in on this one?

7 CHAIRPERSON MITTEN: Sure.

8 COMMISSIONER PARSONS: I think this is
9 something we ought to consider in the upcoming hearing
10 on the WO Zone, because I think this kind of, I'll
11 call it, transfer of development rights may occur in
12 almost all WO Zones we begin to apply, that maybe this
13 special zoning category we're creating would have this
14 provision where at the time of zoning we could say and
15 in our estimation this is the best place to have a
16 subset of WO, WO minus --

17 CHAIRPERSON MITTEN: Minus, minus. That's
18 worthwhile. And we'll have to remember to talk about
19 that at that point.

20 COMMISSIONER PARSONS: We will. I'll
21 remind you.

22 CHAIRPERSON MITTEN: Okay. Good. Another
23 question I wanted to ask you about that I don't know
24 if you've thought about this or not but since in
25 certain areas the CR will be the underlying zone in

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1 the overlay and since the goal is to have a
2 substantial amount of open space oriented to the
3 waterfront, did you think about whether or not we want
4 to retain the residential/recreation space requirement
5 in the CR Zone, because it's a significant requirement
6 -- it's 15 percent? And I guess maybe I'm just asking
7 that you think about that. I don't know if we were to
8 change that at all -- since it would be less
9 restrictive I don't know that we would need to worry
10 about advertising that, would we, Mr. Bergstein.

11 MR. BERGSTEIN: Pardon me?

12 CHAIRPERSON MITTEN: I was just asking if
13 we -- I was asking regarding the retention of the
14 residential/recreation space requirement in the CR
15 Zone. And if we were to change it and relieve
16 properties in the Southeast Federal Center Overlay of
17 the requirement or to ease the requirement, would we
18 need to advertise it now because it's less
19 restrictive?

20 MR. BERGSTEIN: I think you should at
21 least open up the possibility in the advertised text
22 that you would consider it without actually perhaps
23 figuring out the codifications.

24 CHAIRPERSON MITTEN: Okay.

25 MR. BERGSTEIN: Put folks on -- the public

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1 on notice that that would be a subject for the hearing
2 consideration.

3 CHAIRPERSON MITTEN: I'm throwing it out.

4 I don't know if the Office of Planning is -- can you
5 give a preliminary response at this point?

6 MS. MCCARTHY: Well, I think as Mr. Lawson
7 indicated, one of the reasons that we thought the
8 additional height made some sense is that by having
9 the maximum height in the CR Zone here by 110 instead
10 of 90, we could allow for slimmer buildings or for
11 more green space, open space on the ground level. But
12 what it would make sense to do is some specific
13 calculations with the typical footprint and look at
14 recreation space, how it's typically allocated roof
15 decks, exercise rooms and all of that when we come
16 back to the Commission for the hearing to give you an
17 idea of how that might work out with the CR and see
18 whether we need to make any changes to the CR Zone.

19 CHAIRPERSON MITTEN: At this point, what
20 Mr. Bergstein's advice was just now, if I understood
21 him, is that we should indicate to the public in our
22 advertisement that we're thinking about this so that
23 we can get some feedback. And so I don't know the
24 best way to do that, given that you don't have -- at
25 this point, you'd just like to think about it some

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1 more.

2 MR. BERGSTEIN: Well, it could be put in
3 the terms of a "may," that the Zoning Commission --

4 CHAIRPERSON MITTEN: Okay.

5 MR. BERGSTEIN: -- may also consider and
6 would invite public feedback and perhaps at the
7 beginning of the hearing if the Office of Planning as
8 part of its hearing report provided a recommendation
9 that was adverse to that and you agreed with that,
10 then you could just indicate at the hearing that that
11 in fact won't be a subject matter that people would
12 need to discuss.

13 CHAIRPERSON MITTEN: Okay. Just as long
14 as we can get it out there to talk about. Another
15 little sort of technical thing, which is probably not
16 that big of a deal, 1805.12, that the Applicant can
17 appeal any decision of the Director regarding the fee
18 schedule to the Commission, which I don't really know
19 why that would happen, but I think to the extent that
20 that's a necessary provision, that that would be
21 something that would be decided at setdown, which is
22 when -- I mean that's the earliest in the process that
23 would make sense.

24 On the list, which is on Page 7 of the
25 proposed text, there are a number of retail

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1 establishments and then service entertainment
2 establishments. And I was wondering if you could just
3 speak for a minute about this area and its development
4 will relate to the area to the west that's also in the
5 CR Zone in the Capitol Gateway Overlay in terms of
6 where do you see -- this is -- I'm kind of thinking
7 back to the waterside mall discussion that we had in
8 terms of destination kind of retail versus
9 neighborhood-serving retail?

10 And is this an area where we wouldn't
11 expect the neighborhood-serving retail to be, rather
12 we'd expect it in the Capitol Gateway Overlay District
13 or have you thought about it? Because I'm thinking
14 ahead to whether or not we should be in one place or
15 the other since we've talked about the fact that we
16 probably be refining the Capitol Gateway Overlay
17 District in the not too distant future, whether there
18 should be an incentive one place or the other for
19 neighborhood-serving retail so that we get that
20 grocery store and various sundry other things.

21 DIRECTOR ALTMAN: It's a good question,
22 because at this -- you know, it's an interesting
23 question because this site, I think, has some unique
24 attributes in that it is -- you are serving both an
25 office population, that will be significant, so you

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1 have a lot of daytime users who will be there on the
2 site. You have the residential, so you have the
3 neighborhood-serving retail. And you potentially have
4 some amount, depending on what happens with in the
5 buildable area of the WO potentially some tourist and
6 destination attraction that may go there, sort of
7 waterfront-oriented retail.

8 So the answer to the question is I think
9 this is an interesting combination of all three. Now,
10 on the other side of the street where the HOPE 6 will
11 be coming forward in terms of the PUD and what's being
12 looked at there, we may have the possibility for a
13 grocery store that could be going in as part of that
14 development. That's being explored now. That could
15 then serve the residential population over here as
16 well as this whole area of sort of near Southeast.

17 So this is -- you know, we're not
18 precluding anything at this point, but what I think
19 you'll see here is sort of the evolution of office-
20 serving retail, kind of convenience retail, grocery
21 stores not precluded, other uses aren't precluded. I
22 think it will be a question of how the market sort of
23 evolves between these two sites. So I guess at this
24 point we're not trying to designate one or other but
25 allow it to evolve, as you're going to have -- if all

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1 goes well and the market holds, and these sites are
2 very attractive, you could have up to 4,000 units of
3 housing between the Southeast Federal Center and the
4 HOPE 6. So a significant amount of residential
5 development that we hope can sustain some retail in
6 this area.

7 CHAIRPERSON MITTEN: Okay. Thank you.
8 And then one last comment, which is the section that's
9 included, 1810, the exemption from large check review
10 procedures. As it's noted, those procedures are set
11 forth in 10 DCMR, not 11 DCMR, and it's beyond our
12 authority to provide that exemption. So I think
13 particular section is best deleted as beyond the scope
14 of our jurisdiction. Any other questions for the
15 Office of Planning?

16 VICE CHAIRMAN HOOD: Madam Chair?

17 CHAIRPERSON MITTEN: Mr. Hood.

18 VICE CHAIRMAN HOOD: Since we're going
19 through the -- I want to look at 1808.6 where we
20 state, "For good cause shown." I think that the
21 Commission -- I think we need to have a little more
22 direction. I can see us having maybe five -- or the
23 Zoning Commission having five good causes in
24 agreeance. I think we just need a little more
25 clarification.

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1 And I'm also concerned about a non-
2 preferred use on it for five years. That's prime
3 location, and once you get someone in for five years
4 in this City, I've found it to be hard to move them.
5 So we might want to look at that again, and,
6 hopefully, if you haven't already worked with Corp
7 Counsel, maybe we can. I just think we need a little
8 more direction for good cause shown, because we've had
9 that clause before in other issues, and it was hard to
10 grapple with.

11 DIRECTOR ALTMAN: Can you just cite the
12 specific citation, just as a reference for us?

13 VICE CHAIRMAN HOOD: Oh, 1808.6. It
14 starts off, "For good cause shown. The Commission may
15 authorize interim occupancy of the preferred-use space
16 required by 1805.3."

17 DIRECTOR ALTMAN: Right.

18 VICE CHAIRMAN HOOD: I just think that
19 whatever Commission is sitting here might need a
20 little more guidance, and maybe if we can work with
21 Corp Counsel, because sometimes you have five
22 different opinions. Good cause shown may be for five
23 different things, and I just see that maybe causing a
24 problem in the future.

25 DIRECTOR ALTMAN: The intent here is that

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1 this really relates to the ground floor requirement,
2 particularly with respect to retail, that we wanted to
3 -- the retail market will strengthen as the Southeast
4 Federal Center continues to develop, so we wanted to
5 provide some flexibility in those first five years as
6 it sort of builds out. But what was important is that
7 the ground floor was designed so that it would
8 accommodate the ground floor retail. There may not be
9 the market immediately for the ground floor retail,
10 say, for the first building that goes in. We know
11 over time there will be, so they'd have to demonstrate
12 this good cause. So I understand what you're saying,
13 and so we can look at that with the Corp Counsel a
14 little further.

15 VICE CHAIRMAN HOOD: And I realize the
16 part about jump-starting and getting it started, but
17 I'm just concerned about the "for good cause shown."

18 CHAIRPERSON MITTEN: Thank you. Anyone
19 else? All right. We have a recommendation from the
20 Office of Planning to set down Case Number 03-06, and
21 I so move.

22 VICE CHAIRMAN HOOD: Second.

23 CHAIRPERSON MITTEN: Any further
24 discussion? All those in favor please say aye. Those
25 opposed please say no.

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1 (Commission members vote.)

2 CHAIRPERSON MITTEN: Ms. Sanchez, would
3 you record the vote.

4 MS. SANCHEZ: Yes. Staff would record the
5 vote five to zero to zero. Commissioner Mitten
6 moving, Commissioner Hood seconding, Commissioners
7 Hannaham, May and Parsons in favor.

8 CHAIRPERSON MITTEN: Thank you. And this
9 will be a rulemaking. And I also would just like to
10 say in as much as we have not yet created the WO Zone,
11 and that hearing is scheduled for mid-March, is that
12 correct, Mr. Bastida?

13 SECRETARY BASTIDA: I believe so, but if
14 you want exact date, I have to go back to my desk.

15 CHAIRPERSON MITTEN: No, but next month.

16 SECRETARY BASTIDA: Right.

17 CHAIRPERSON MITTEN: Next month. So I
18 think we'll just de facto have a staggered -- this
19 will be staggered, but we want to take up the issue of
20 the WO Zone first before we try and map it. So thank
21 you.

22 Next we'll move to Proposed Action, and
23 the first is Zoning Commission Case Number 02-33,
24 which is a Fort Lincoln Washington Gateway Map
25 Amendment. First, I would like to say that in as much

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1 as I did not attend that hearing, that I have read the
2 record, and I am -- including the transcript of the
3 hearing, and I am prepared to proceed. And let me
4 just -- I thought I'd just give a little recap to
5 start.

6 The request is to rezone the site from C-
7 3-C, R-5-D and SP-2 to C-2-B. The existing zoning is
8 inconsistent with the generalized land use map
9 designation for moderate-density commercial uses, and
10 the proposed C-2-B designation would not be
11 inconsistent with that designation.

12 At the hearing, concern was expressed by
13 certain members of the public, specifically the Fort
14 Lincoln Civic Association, that they did not receive
15 adequate notice in order to review and comment on the
16 proposed Map Amendment. Consequently, the record was
17 left open for two months following the hearing date
18 until January 23, 2003 to give them ample time to
19 comment.

20 Prior to the closing of the record, we
21 received correspondence from the RLA Revitalization
22 Corporation and the Fort Lincoln Civic Association and
23 supplemental information from the Office of Planning.

24 The Office of Planning also filed a further
25 information report on February 7, 2003, and we must

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1 reopen the record in order to accept that most recent
2 filing from the Office of Planning. So any objection
3 to reopening the record and accepting that filing?

4 VICE CHAIRMAN HOOD: No objection.

5 CHAIRPERSON MITTEN: Any objection? All
6 right. Then by consensus. And the Office of Planning
7 recommends approval, ANC-5A voted to support the Map
8 Amendment, and the Fort Lincoln Civic Association is
9 opposed to the Map Amendment. And I'll open up the
10 floor for discussion by the Commission.

11 VICE CHAIRMAN HOOD: Madam Chair, I'm
12 ready to move ahead with this. I would put a motion
13 on the table that we approve Zoning Commission Case
14 02-33, the Fort Lincoln Map Amendment.

15 CHAIRPERSON MITTEN: Second? Let's have
16 some further discussion.

17 COMMISSIONER PARSONS: Well, Madam
18 Chairman, I'm going to vote against this motion. I'm
19 really troubled. And I guess the real problem is the
20 concept plan that was submitted for our information,
21 which ultimately probably will not be built but
22 certainly gave a feeling for what was contemplated
23 here. And I'm very concerned, the adjacent owner
24 here, the BW Parkway, which we manage, this is the
25 gateway to the City. And this kind of development is

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1 potentially ruinous to that entrance to the City, and
2 I just am not comfortable with this without a planned
3 unit development. The zoning in principle, that is
4 the zoning category C-2-B is certainly better than C-
5 3-C that now exists on that corner, but I just think
6 it's important enough to have the guidance of a
7 planned unit development. So those are my views.

8 CHAIRPERSON MITTEN: If I could just ask
9 you in terms of if we were to proceed, the Applicant
10 is entitled to zoning that's not inconsistent with the
11 generalized land use map and the Comprehensive Plan.
12 And what they've requested is not inconsistent but the
13 existing zoning is. So they're entitled to zoning --
14 they're entitled to some zoning. So regardless of
15 what they plan to do here, had you thought through to
16 the point of how can we satisfy the consistency issue
17 as a baseline problem?

18 COMMISSIONER PARSONS: Well, I would
19 simply ask them to come back with a PUD that was
20 consistent, that's all.

21 CHAIRPERSON MITTEN: Okay.

22 COMMISSIONER PARSONS: And I wish we could
23 have conditional zoning. I mean there's some
24 requirements here that I think could be placed on this
25 property that would satisfy me. The wetlands to the

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1 east of this are very significant, very significant,
2 along the Anacostia River, and storm water coming off
3 of this site plan is frightening. So that's another
4 aspect. It just needs care and signage and how we
5 could have an enormous sign welcoming people as they
6 do at Potomac Mills, sure that's not going to happen,
7 but I want to be a participant in that.

8 CHAIRPERSON MITTEN: Anyone else?

9 COMMISSIONER MAY: I would like to add my
10 voice to Commissioner Parsons' concerns about this
11 particular site, in light of the site plan that we've
12 seen, and issues of zoning consistency notwithstanding
13 I am just very uncomfortable with the way it is. And
14 I think that not just on the basis of the importance
15 of the site but also the extent to which the site as
16 it could be developed under the zoning, the extent to
17 which it could in fact serve the adjacent neighborhood
18 is somewhat in question. It seems like it's being
19 groomed for development as a destination, citywide
20 destination, and I'm not convinced that that is truly
21 consistent with our intentions. I would also be much
22 more comfortable with this as a PUD.

23 CHAIRPERSON MITTEN: Mr. Hood?

24 VICE CHAIRMAN HOOD: Madam Chair, I have a
25 serious problem with us again. We're going down the

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1 same lines of question and asking the Applicant to
2 come back with a PUD. We've been down that -- as a
3 matter of fact, I think that case is still in front of
4 us and that was two years ago. But let me just say
5 this: I would like to remind my colleagues that this
6 Commission we've already approved a residential area,
7 which I guess is not too far distance away, we've just
8 approved proven distributors, which is not too far
9 away. So I think it's going back to the Chair's
10 comments about being a consistent -- making it not
11 inconsistent with the comp plan. I think that's the
12 direction that we need to move.

13 I can assure you that I don't see us
14 asking the Applicant to come back with a PUD. We've
15 done that before and you saw what trouble it got us in
16 and here we are again going down the same lines asking
17 the Applicant to come back with a PUD. This is just a
18 Map Amendment, we've already voted on two projects
19 already in that area, and this just makes it not
20 inconsistent with the comp plan. I think we need to
21 do what the Zoning Commission is charged to do, not to
22 be inconsistent with the comp plan. And there are
23 other reviews after we -- if this is approved, there
24 are other reviews, as the Chair has already stated.
25 Again, we're asking for something I have a serious

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1 problem with.

2 CHAIRPERSON MITTEN: One of the things
3 that -- I mean I agree, if this is developed as the
4 Concept Plan depicts, it would be horrible. But all
5 the reviews are in the hands of another agency. I
6 don't know if it's specifically NCRC or if it's the
7 RLA Revitalization Corporation. And for us to
8 basically send the message that we don't think they're
9 up to the stewardship task that they have, that we're
10 the ones who know best about how the site should be
11 developed, I think that's not the impression that I
12 would want to give to an agency.

13 I think there's probably criticism,
14 appropriate criticism that could be laid at the feet
15 of the old RLA and their stewardship of the assets
16 that they had, but this is a new agency, new staff,
17 new decision makers, and the representative from NCRC
18 indicated that they rely on the same expertise from
19 different city agencies that we do. They rely on the
20 Office of Planning for design advice, they rely on
21 DDOT for transportation advice and so forth. And that
22 they would also seek public input for the actual
23 development.

24 So is it desirable that this has further
25 review? Absolutely. Is it appropriate for us to say

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1 that we're the best place to get that review? Maybe
2 we are but I don't know that that's really appropriate
3 for us to send that message when we've been given
4 assurances -- and if you want to ask the Office of
5 Planning about their level of concern, we can do that,
6 but I think everybody -- in reviewing the transcript
7 in particular, I think there were a number of
8 assurances given that there would be ample
9 consideration given to the issues that had been raised
10 regarding design, the orientation of the neighborhood-
11 serving retail closer to the residential community and
12 storm water management issues and so forth.

13 So I'm in favor of giving these folks
14 zoning that's not inconsistent with the Comprehensive
15 Plan and moving forward. Any other thoughts? Mr.
16 Parsons?

17 COMMISSIONER PARSONS: Well, one thought
18 that I failed to mention, as you'll recall, is the
19 Premium Beer Distributors did come to us as a PUD and
20 the housing that was previously approved by this
21 Commission was a PUD. So it isn't without precedent
22 that I ask for this.

23 CHAIRPERSON MITTEN: I understand.

24 COMMISSIONER PARSONS: Yes, it was the
25 past administration --

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1 CHAIRPERSON MITTEN: Yes, I understand.

2 COMMISSIONER PARSONS: -- that brought us
3 PUDs, and maybe this one shouldn't, but I don't know
4 why.

5 CHAIRPERSON MITTEN: Any further comments?
6 Mr. Hannaham?

7 COMMISSIONER HANNAHAM: Well, yes, Madam
8 Chairman. I can see both sides. I can see where both
9 sides have a good point, really. The PUD process also
10 gives an opportunity to get the community really
11 deeply involved, and to some degree that doesn't
12 seemed to have happened right now. It's just
13 beginning, and I would lean toward giving this new
14 organization, the NCPC, a chance to show its stuff.

15 CHAIRPERSON MITTEN: NCRC.

16 COMMISSIONER HANNAHAM: NCRC, sorry. This
17 may be the first major project that they've
18 undertaken, I don't know. I haven't heard of other
19 things that they've done.

20 CHAIRPERSON MITTEN: Tivoli Theaters.

21 COMMISSIONER HANNAHAM: Have they?

22 CHAIRPERSON MITTEN: Up in Columbia
23 Heights, they done a few.

24 COMMISSIONER HANNAHAM: Oh, Columbia
25 Heights, right. Well, this is a lot of area. This is

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1 big.

2 CHAIRPERSON MITTEN: Yes.

3 COMMISSIONER HANNAHAM: And it is Gateway
4 and it's really important. So I recognize that there
5 would be definite advantages. A PUD would really
6 point people toward excellence. You look to
7 superlative things, and you measure by standards that
8 might be achieved by just people doing the right
9 thing, not necessarily -- we wouldn't necessarily be
10 the last word when it comes to these kinds of
11 qualities.

12 I sort of tend to think that I would like
13 to give this organization an opportunity to show that
14 it is up to the demands of this particular project.
15 And this is a huge thing, it's going to be extremely
16 significant. There are a lot of things that are going
17 to have to be done. I don't know whether we are
18 completely out of it by just looking at this as a
19 rulemaking, as a zoning --

20 CHAIRPERSON MITTEN: As a Map Amendment,
21 we would be.

22 COMMISSIONER HANNAHAM: We would be out of
23 it entirely.

24 CHAIRPERSON MITTEN: Right. Because the
25 Map Amendment allows them to go forward with the

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1 development that fits under the Fort Lincoln Urban
2 Renewal Plan without any further review on our part,
3 not that there's no further review by the RLA
4 Revitalization Corporation.

5 COMMISSIONER HANNAHAM: All right. Could
6 we ask for some measure of review or reporting along
7 the way? Would that be --

8 CHAIRPERSON MITTEN: Not if we just
9 approve the Map Amendment, no.

10 COMMISSIONER HANNAHAM: All right.

11 CHAIRPERSON MITTEN: We could all go to
12 the --

13 COMMISSIONER PARSONS: We can be part of
14 their public hearing.

15 CHAIRPERSON MITTEN: Yes. I was just
16 going to say.

17 COMMISSIONER HANNAHAM: That's true. My
18 feeling is that I would err toward giving this
19 organization a break, giving them an opportunity to
20 really show their stuff with this great opportunity
21 here. So I would favor the Map Amendment that's been
22 proposed.

23 CHAIRPERSON MITTEN: Okay. Last thoughts
24 before we move to a vote? All right. We have a
25 motion and a second to approve Zoning Commission Case

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1 Number 02-33. All those in favor please say aye.
2 Those opposed please say no.

3 (Commission members vote.)

4 CHAIRPERSON MITTEN: Ms. Sanchez, could
5 you record the vote?

6 MS. SANCHEZ: Yes. Staff would record the
7 vote three to two to zero. Commissioner Hood moving,
8 Commissioner Mitten seconding, Commissioner Hannaham
9 in favor, Commissioners Parsons and May against. And
10 this is to take proposed action in Case 02-33.

11 CHAIRPERSON MITTEN: Thank you. The next
12 case is Zoning Commission Case Number 01-02, and these
13 are our antennae regulations that we are so happy to
14 be at proposed action, and we hope Ms. Steingasser is
15 here. Is she here? Is she here? Oh, okay. Just in
16 case we need a little backup on the details.

17 Our last discussion of this case was at
18 our November 19, 2002 public meeting. We raised a
19 number of concerns and asked for a follow-up report
20 from the Office of Planning, which we received on
21 February 10. And I believe we need to reopen the
22 record to receive that report, because it was filed
23 late, and we also need to reopen the record for a
24 letter that came from Ed Donohue representing OCTO.
25 Is there any objection to reopening the record to

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1 receive those two reports -- the report and the
2 letter? No objection. All right.

3 We have also received advice from
4 Corporation Counsel regarding the concern of the
5 industry representatives that prohibitions on
6 monopolies and towers in certain zones would violate
7 the Telecommunications Act, and I'm going to ask Mr.
8 Bergstein to summarize the advice.

9 MR. BERGSTEIN: Thank you, Madam Chair.
10 We looked at the Telecommunications Act and
11 specifically at the provision which indicates that a
12 state or its instrumentality shall not prohibit or
13 have the effect of prohibiting the provision of
14 personal wireless services. And after our review of
15 what is a very extensive case law, we concluded that
16 that means that there must be a mechanism to allow for
17 the review of applications for those services in all
18 zones.

19 The case law has indicated that it could
20 be either variance or special exception, but it has
21 also indicated that there must be a meaningful
22 opportunity to prove one's case. And in the case of
23 our variance provision, because the practical
24 difficulty has to be to and the undue hardship has to
25 be upon the owner of the property, if the Zoning

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1 Commission used a variance standard, it would almost
2 be impossible for the application to be granted,
3 because the type of practical difficulty or hardship,
4 there would be hardship, actually, because of the use
5 variance, would really be upon the wireless provider
6 and not the owner of the property. So because of the
7 way the variance statute is written, the only choice
8 would be to allow for a special exception review, and
9 in fact the revision that has been offered by the
10 Office of Planning does that.

11 The next thing we looked at is what would
12 be the standard of that review, and we looked at the
13 proposed rules that were drafted by the Office of
14 Planning, which we also took part in that drafting as
15 well. And with respect to special exception, we read
16 the rules as allowing for the use of a monopole or a
17 tower in certain zones upon proof that, in essence,
18 this is the only location and the only means to
19 provide wireless service. And as we read the case
20 law, what we concluded was that once that showing had
21 been met, that the normal special exception inquiry in
22 terms of adverse impacts and harmony with the intent
23 of the zoning regulation could not be used by the BZA
24 to deny an application.

25 And so have provided you with alternative

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1 language to the special exception provision that would
2 indicate that once a provider has met its burden of
3 showing a significant gap in coverage and that the
4 location and the height of the monopole was absolutely
5 need to fill that gap and that the monopole, as
6 designed and constructed, was the least intrusive
7 means providing that service, that that would meet the
8 burden of proof for the special exception. So we
9 believe that that would be required in order for the
10 regulations to not be subject to a judicial challenge.

11 In all the respects, the revisions that were made by
12 the Office of Planning removed any preemption concerns
13 that we might have.

14 CHAIRPERSON MITTEN: Thank you, Mr.
15 Bergstein. The way I'd like to go through this is
16 simply I have a number of what I think are just
17 editorial changes that I'd just like to give to Mr.
18 Bergstein to judge if they're appropriate and
19 incorporate them if they are. And then I'd like to
20 just run through each section and if anyone has any
21 substantive questions or changes that they'd like to
22 propose, just speak up.

23 So we'll start in the Purpose, 2600;
24 Certification, 2601; 2601, Matter-of-Right Antennas;
25 2603, Ground-mounted Antennas. I have a couple of

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1 questions here. And this first question actually
2 relates to a couple of places -- and either Ms.
3 Steingasser or Mr. Bergstein just offer to answer any
4 of these. Twenty-six-oh-three point one, the
5 Introduction, "except for those antennas exempted by
6 2606." Twenty-six-oh-six is now the stealth
7 structures, and 2607 is now exempted antennas. Are we
8 intending that that should actually be 2606 and 2607?

9 MS. STEINGASSER: Madam Chair, that should
10 be 2607 was the original intent.

11 CHAIRPERSON MITTEN: Just 2607. I guess
12 the nature of my question is when we get to stealth
13 structures, those are sort of -- there are certain --
14 if an antennae is in a stealth structure, then it's
15 not otherwise bound by the ground-mounted, roof-
16 mounted, building-mounted rules; is that correct?

17 MS. STEINGASSER: That is correct. It has
18 its own stealth requirements.

19 CHAIRPERSON MITTEN: Okay. I guess what
20 I'm saying is wouldn't it be appropriate to say when
21 we're saying, "except for those antennas exempted," or
22 maybe we should say, "or otherwise governed by." I'm
23 thinking how are we going to incorporate the notion of
24 the stealth in this to say, oh, you might actually be
25 bound by stealth instead of this. Maybe that's just

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1 something for you to think about. We don't have to
2 necessarily have to sort everything out. I just need
3 to raise some of these things. And that's true also
4 for roof-mounted and building-mounted.

5 You did some work for us on 2603.1(a),
6 which is point of measurement above the ground, and
7 talked about what exactly is the ground. But then I
8 wanted to add something, perhaps, about where is the
9 ground also, because we often are specifying when
10 we're measuring building heights that it's the
11 adjacent finished grade or it's the curb or something
12 like that, and I just wanted to say, "above the ground
13 on which it is located," so we're talking about the
14 ground that the thing is standing on.

15 VICE CHAIRMAN HOOD: Madam Chair, can we
16 back up?

17 CHAIRPERSON MITTEN: Sure.

18 VICE CHAIRMAN HOOD: I want to go back to
19 2603.1.

20 CHAIRPERSON MITTEN: Yes.

21 VICE CHAIRMAN HOOD: I'm not as fast as
22 you are, so I've got about five --

23 CHAIRPERSON MITTEN: I'm sorry, I
24 shouldn't speak so quickly.

25 VICE CHAIRMAN HOOD: -- five or six

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1 different sheets in front of me trying to go back and
2 forth. But I had a concern with 2603.1. I noticed on
3 the Office of Planning supplemental report that that
4 was removed, and I'm just curious why? I was
5 interested in that -- it was a 25-foot setback. And
6 it starts off by saying, "Disregard the advertised
7 text in 2603 --

8 CHAIRPERSON MITTEN: So you're still in --
9 you're in old F on 2603.1.

10 VICE CHAIRMAN HOOD: Right, 2603.1(f).
11 I'm looking at the old F.

12 MS. STEINGASSER: F Subsection? Yes, sir.
13 We proposed deleting that section and instead
14 proposed Subsection E, which was less stringent and
15 allowed a much more flexible application of the
16 regulations. As we worked through some various
17 scenarios and looked at some of the previously
18 approved applications, 25 feet became a really rigid
19 type of setback that would require -- could easily
20 result in variance applications for the applicants to
21 fit ground-mounted antennas, and what we were trying
22 to do was allow for them to be tucked up against
23 buildings and have their visibility reduced.

24 We found that this application of 25 feet
25 actually could much more easily result in an antennae

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1 being more visible rather than less visible, because
2 you now had a setback on excess of what the buildings
3 were required to set back, so you kind of created a
4 view shed that actually led to the antennae rather
5 than a niche to screen it.

6 VICE CHAIRMAN HOOD: Okay. And you say
7 you replaced that with E?

8 MS. STEINGASSER: E.

9 VICE CHAIRMAN HOOD: Which starts, "Each
10 antennae installation."

11 MS. STEINGASSER: Yes, sir.

12 VICE CHAIRMAN HOOD: Okay. All right.
13 Thank you.

14 MR. BERGSTEIN: Madam Chair, could I go
15 back to your previous question --

16 CHAIRPERSON MITTEN: Yes.

17 MR. BERGSTEIN: -- because I want to make
18 sure I understand your issue, because I think you may
19 well be right. What you're suggesting is because a
20 stealth structure could be a roof-mounted antennae, a
21 ground-mounted antennae or a building-mounted
22 antennae, we need to ensure that those structures are
23 separately called out and not governed by that
24 provision.

25 CHAIRPERSON MITTEN: Yes, that's exactly

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1 right.

2 MR. BERGSTEIN: All right. And I think
3 you are probably correct in that.

4 CHAIRPERSON MITTEN: Okay. I always like
5 to hear that.

6 COMMISSIONER MAY: Can I --

7 CHAIRPERSON MITTEN: Sure.

8 COMMISSIONER MAY: I want to also mention
9 on the subject of ground -- we're in 2603.1(a) where
10 it referred to the measuring point for the ground, and
11 then it's at 2603.3 where we define ground, and I'm
12 wondering, I mean we are trying to define ground in
13 terms of the measuring point, right?

14 CHAIRPERSON MITTEN: Yes.

15 MS. STEINGASSER: Yes, sir.

16 COMMISSIONER MAY: Okay. Because the way
17 it reads it says that ground, as it is used in this
18 section, would not include berms or anything --
19 planter boxes or anything like that, which is sort of
20 a strange restriction saying that you can't put an
21 antennae into a planter box.

22 MS. STEINGASSER: That's correct.

23 COMMISSIONER MAY: So that is part of the
24 definition too, that you can't --

25 MS. STEINGASSER: That was the intent.

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1 COMMISSIONER MAY: Not in terms of
2 measuring but just in terms of where you can put it.

3 MS. STEINGASSER: Right. A ground-mounted
4 antennae could not be -- an antennae placed in a
5 planter box could not be considered a ground-mounted
6 antennae.

7 COMMISSIONER MAY: Okay.

8 MS. STEINGASSER: We were trying to find
9 ways --

10 COMMISSIONER MAY: You are trying to
11 define it both in terms of where it can go but also in
12 terms of defining the height.

13 MS. STEINGASSER: Yes.

14 COMMISSIONER MAY: Okay.

15 MS. STEINGASSER: Right. That's correct.

16 COMMISSIONER MAY: Because in the report I
17 think it made reference to defining how you measure
18 height only, and that's what sort of set it off for
19 me, because it says it's not limited to just -- it
20 doesn't limit the definition to just in terms of
21 defining what ground is for measuring purposes.
22 You're saying it can't apply anyway.

23 MS. STEINGASSER: It couldn't qualify for
24 the definition of a ground-mounted antennae. That's
25 not -- I'm trying to think how it could be

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1 manipulated.

2 COMMISSIONER MAY: Unless it's in the
3 actually in the ground.

4 MS. STEINGASSER: That's correct. You
5 couldn't use a planter -- the intent of the section is
6 to say that you couldn't use a planter box to
7 artificially raise a seven-foot planter box and then
8 put a 12-foot antennae on top of that.

9 COMMISSIONER MAY: Right. But that goes
10 to the issue of height.

11 MS. STEINGASSER: Right.

12 COMMISSIONER MAY: What you're also
13 effectively prohibiting is somebody from mounting it
14 in a berm, even if they did measure it from what the
15 original grade was. Not that anybody is going to
16 actually put it into a planter box, but they might put
17 it on a berm.

18 MS. STEINGASSER: They might put it on a
19 berm. That wasn't the intent. The intent was to
20 avoid artificial --

21 COMMISSIONER MAY: Means of raising the
22 height.

23 MS. STEINGASSER: Right.

24 COMMISSIONER MAY: Okay. So we need to --

25 MS. STEINGASSER: Maybe we could work with

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1 OCC on this.

2 COMMISSIONER MAY: -- make some reference
3 to the height.

4 MS. STEINGASSER: Okay.

5 COMMISSIONER MAY: Okay.

6 CHAIRPERSON MITTEN: Thank you. Okay.
7 Twenty-six-oh-three point one (f), "The antennae shall
8 not be visible from any public park that is within the
9 central employment area or from any street that the
10 lot abuts." So does that mean that the antennae has
11 to be screened for its full height? And this is
12 ground-mounted, mind you. Because that's the only way
13 that you wouldn't be able to see it from the abutting
14 lot if it's screened for its full height. Is that
15 what you meant?

16 MS. STEINGASSER: That was the intent.

17 CHAIRPERSON MITTEN: I mean the abutting
18 street. I'm sorry ?

19 MS. STEINGASSER: Yes. The intent was that
20 it would not be immediately visible within the central
21 employment area or from the streets that the antennae
22 abuts.

23 CHAIRPERSON MITTEN: Okay. It's the part
24 -- what it says is, "a park in the central employment
25 area or from any street that the lot abuts." So

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1 that's from anywhere in the City. So that would mean
2 that the antennae would have to be -- the ground-
3 mounted antennae that we're talking about, because
4 we're in Section 2603, would have to be screened for
5 its full height in order not to be visible. You
6 follow me?

7 MS. STEINGASSER: I do. That would
8 probably be pretty onerous and could have technical
9 interference issues as well. I'm looking for some
10 bobbing heads in the audience. I'd like to revisit
11 that issue.

12 CHAIRPERSON MITTEN: Okay. I mean I think
13 we're -- I would be supportive of some kind of
14 screening, but that seems rather extreme because these
15 things could be 20 feet tall and you could end up with
16 something screening it that's actually uglier than --

17 MR. STEINGASSER: That's uglier than the
18 intent.

19 CHAIRPERSON MITTEN: Right.

20 MR. STEINGASSER: And that's not the
21 intent. Again, it goes to what we were trying to
22 achieve in Subsection E, which was just to the
23 greatest practicable extent --

24 CHAIRPERSON MITTEN: Okay.

25 MR. STEINGASSER: -- of its visibility.

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1 So perhaps the right thing to do might be just to
2 delete that section and rely on Subsection --

3 CHAIRPERSON MITTEN: Oh, we have a little
4 upset down here.

5 COMMISSIONER PARSONS: Wait. Delete that
6 whole section? That's an overreaction.

7 CHAIRPERSON MITTEN: Well, let me just say
8 one thing, which is this is proposed action, so some
9 of these items we can advertise it, we can pass this,
10 but we're asking you to do some follow-up so that
11 maybe when we take final action we would make some
12 changes. But for the time being, F is in as written,
13 how's that?

14 MR. STEINGASSER: Okay.

15 CHAIRPERSON MITTEN: Because we don't have
16 a good alternative to propose.

17 COMMISSIONER PARSONS: Thank you.

18 CHAIRPERSON MITTEN: And we don't like the
19 idea of just deleting it.

20 MR. STEINGASSER: You don't like that
21 idea.

22 CHAIRPERSON MITTEN: That causes
23 heartburn. Okay. Everybody with 2603.1? Twenty-six-
24 oh-three point two, okay, "A ground-mounted antennae
25 that does not comply with the above requirements may

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1 be permitted through special exception." Okay. Is
2 that intended to address just the physical
3 characteristics of a single antennae or to allow
4 multiple ground-mounted antennas by special exception?

5 MR. STEINGASSER: It should also include
6 multiples.

7 CHAIRPERSON MITTEN: Okay. I think maybe
8 we could make that just a tiny bit more clear. Okay,
9 2604, Antennas Placed on a Roof. I'm going to
10 advocate that we call them roof-mounted antennas, just
11 because it will be consistent then with ground-mounted
12 and building-mounted. I just want to verify that
13 there's no intended limit on the number of roof-
14 mounted antennas; is that correct?

15 MR. STEINGASSER: That is correct.

16 CHAIRPERSON MITTEN: Okay. And do we
17 care, as we did in the preceding section, about
18 visibility from parks in the central employment area?

19 COMMISSIONER PARSONS: That was what was
20 advertised, that's what we had a hearing on. I don't
21 remember anybody objecting.

22 CHAIRPERSON MITTEN: On roof-mounted
23 antennas?

24 COMMISSIONER PARSONS: Oh, yes.

25 CHAIRPERSON MITTEN: I don't have my

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1 original --

2 COMMISSIONER PARSONS: Is this brand new?
3 I thought we only inserted national monuments here.

4 CHAIRPERSON MITTEN: Well, what's crossed
5 out here is the language that talks about screening,
6 but the language in the preceding section of 2603.1(f)
7 is, "The antennae shall not be visible from any public
8 park that is within the central employment area." So
9 that was only written for ground-mounted antennas, and
10 my question is do we want to add that for roof-
11 mounted? So we have an advocate for that is what I'm
12 hearing, yes?

13 COMMISSIONER PARSONS: I'm confused.
14 Please help.

15 CHAIRPERSON MITTEN: Okay. All right. I
16 will help. I tried just now.

17 COMMISSIONER PARSONS: I missed your
18 point.

19 CHAIRPERSON MITTEN: Okay.

20 COMMISSIONER PARSONS: You mean to add
21 what we just left in in F in the prior section to this
22 section?

23 CHAIRPERSON MITTEN: We have three
24 sections in succession.

25 COMMISSIONER PARSONS: Yes.

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1 CHAIRPERSON MITTEN: Ground-mounted, roof-
2 mounted, building-mounted.

3 COMMISSIONER PARSONS: Right.

4 CHAIRPERSON MITTEN: So in ground-mounted,
5 we said we don't want to be able to see these things
6 from parks in the central employment area. I'm asking
7 do we want the same kind of restriction on roof-
8 mounted antennas that might be seen from public parks
9 in the area because we didn't apparently have that
10 included. And I will just add, to jump ahead, we
11 don't have that provision included in the section on
12 building-mounted antennas.

13 COMMISSIONER PARSONS: Well, to me,
14 ground-mounted antennas, I don't know how many there
15 are in the Downtown. I would say zero, but maybe
16 there are a lot.

17 MR. STEINGASSER: Well, I could run
18 through the last three years and check our database,
19 but it's not --

20 COMMISSIONER PARSONS: That's all right.

21 MR. STEINGASSER: -- uncommon for there to
22 be satellite dishes.

23 COMMISSIONER PARSONS: Well, that's the
24 one we're after.

25 MR. STEINGASSER: Right.

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1 COMMISSIONER PARSONS: So they're
2 obnoxious at ground level.

3 MR. STEINGASSER: They can be.

4 COMMISSIONER PARSONS: They're sometimes
5 obnoxious on roofs. But what this does is says let's
6 screen them, unlike that horrible installation on Faye
7 and 20th, but I can't remember who it is.

8 MR. STEINGASSER: The issue we were trying
9 to balance here is that if you screen then their full
10 height, then you run a really good chance of
11 interfering with their signal reception and
12 transmission. So then you get into either some kind
13 of stealth screening or mesh screening that can get
14 extremely heavy on roof structures. So we were trying
15 to draw the balance between what could be accommodated
16 physically as well as technically. We were also
17 trying to draw a balance between encouraging placement
18 on roof structures and building as opposed to going
19 with a pole. So to require an over -- we're trying to
20 actually encourage them to be on roofs. That's the
21 preferred location, that's where we want them.

22 COMMISSIONER PARSONS: Right.

23 MR. STEINGASSER: So that's why some of
24 what's talked about being screened on a ground-mounted
25 was indeed less on the roof-mounted, because we were

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1 trying to get to an issue of what could actually be --

2 COMMISSIONER PARSONS: That's what I
3 thought.

4 CHAIRPERSON MITTEN: Okay.

5 MR. STEINGASSER: -- physically
6 accommodated out there.

7 CHAIRPERSON MITTEN: I wasn't advocating,
8 I just want to make sure that we understood that that
9 was a -- that provision was not in there and we agreed
10 with that. Okay. Sounds like we do. Okay.

11 COMMISSIONER PARSONS: I can't recall why
12 we dropped the quarter of a mile, I'm glad we did, but
13 the quarter mile distance that was --

14 MR. STEINGASSER: I think as we worked
15 through it, we might have --

16 COMMISSIONER PARSONS: I agree.

17 MR. STEINGASSER: -- figured it might be a
18 tad arbitrary, a quarter mile in the tree that's
19 across the street. The view's been what was the real
20 relevance of that as it applied in this case,
21 considering the topography Downtown and as you moved
22 out I think is why we got rid of that and went with
23 something minimum, to the greatest practicable extent.

24 Because, as we discussed, I think a lot of the
25 landmarks and historic monuments, waterways, these had

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1 a much larger impact than a quarter mile. So I think
2 that's why we originally proposed getting rid of that.

3 CHAIRPERSON MITTEN: Okay. Okay. I want
4 to verify again there's no limit on the number --
5 moving to 2605, Building-mounted Antennas, no limit on
6 the number there either; is that correct?

7 MR. STEINGASSER: That is correct.

8 CHAIRPERSON MITTEN: Okay. Anybody have
9 anything under 2605? Twenty-six-oh-six, Stealth
10 Structures. I don't have anything -- I want to just
11 voice a concern, and I actually -- this is a broader
12 concern that I have voiced in the past, and it's
13 architectural embellishments. And architectural
14 embellishments are potentially going to be used as
15 stealth structures. And the Zoning Administrator has
16 been fairly liberal about what he thinks constitutes
17 an architectural embellishment and its scale relative
18 to what it's on. And I have a concern about that,
19 because there's going to be now more incentive for
20 people to create architectural embellishments to
21 stealth their antennas, and I'm just concerned that
22 we're not giving any guidance to the Zoning
23 Administrator, and I haven't been satisfied in the
24 past that the judgment that he's used has been the
25 best. And I can give specific examples if people

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1 want, but I don't want to get into that.

2 So I guess maybe I just want to voice at
3 this point to Ms. Steingasser that we're going to need
4 to visit the issue of architectural embellishments at
5 some point soon, because I think that it has the
6 potential -- I mean there's some guidance here, but
7 one of the concerns that I had is, and I have it
8 specifically about 2606.3, which is where the Office
9 of Planning will provide a report and recommendation
10 to the Zoning Administrator on each proposed stealth
11 antennae structure, is what if the antennas are added
12 after the fact so that you don't weigh in on
13 architectural embellishments, although maybe that
14 would be preferable too, so that someone could put in
15 an architectural embellishment and then later do a
16 stealth antennae. Would you be weighing in at that
17 point? Because the architectural embellishment at
18 that point would be there, however grotesque.

19 MR. STEINGASSER: In the past we have
20 weighed in.

21 CHAIRPERSON MITTEN: On architectural
22 embellishments?

23 MR. STEINGASSER: Not on the embellishment
24 but when an antennae goes inside a cupola or a
25 steeple. They've still been forwarded to the Office

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1 of Planning, and we have weighed in on them.

2 CHAIRPERSON MITTEN: I guess my concern is
3 that after it's there, after the steeple or the
4 whatever it is is already there, you're not going to
5 say, "You know, that's not very attractive. Why don't
6 you fix that?" That's just not going to happen.
7 You're just evaluating the antennae be placed in it.
8 But the thing itself already exists, and that's what
9 I'm worried about.

10 MR. STEINGASSER: Okay.

11 CHAIRPERSON MITTEN: Mr. May, did you want
12 to get in on this?

13 COMMISSIONER MAY: No. I just wanted to
14 assure the Chairman that when somebody goes to put an
15 antennae on their roof --

16 CHAIRPERSON MITTEN: Yes.

17 COMMISSIONER MAY: -- and they actually
18 apply for the permit, they do have to go to the Office
19 of Planning to get a report.

20 CHAIRPERSON MITTEN: Yes, I understand
21 that.

22 COMMISSIONER MAY: I can tell you from
23 personal experience.

24 CHAIRPERSON MITTEN: Good. I'm glad to
25 hear that.

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1 CHAIRPERSON MITTEN: The system is
2 working.

3 COMMISSIONER PARSONS: How did you make
4 out?

5 COMMISSIONER MAY: It took me an extra
6 couple of days, but I got the permit.

7 VICE CHAIRMAN HOOD: Madam Chair, where
8 are we right now?

9 CHAIRPERSON MITTEN: I'm actually raising
10 a general issue related to stealth antennas.

11 VICE CHAIRMAN HOOD: I mean where on 26?

12 CHAIRPERSON MITTEN: Twenty-six-oh-six.

13 COMMISSIONER PARSONS: Point two.

14 VICE CHAIRMAN HOOD: Okay. I'll wait. I
15 have a question but I'm not sure when to ask it,
16 because I'm looking at something.

17 CHAIRPERSON MITTEN: Just ask it.

18 VICE CHAIRMAN HOOD: I usually do, but I
19 was trying to get permission that time. I'm looking
20 at a correspondence from Mr. Donohue, I believe, and
21 he has seemed to have rewritten the regulations for
22 exempted antennas, and I just wanted to know has the
23 Office of Planing looked at some of the revisions that
24 he has attempted to make? And do we think that some
25 of them may be incorporated?

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1 CHAIRPERSON MITTEN: Let me ask you to do
2 this. He's looking at old 2606, which is now -- new
3 2606 is stealth and 2607 is exempted antennas.

4 VICE CHAIRMAN HOOD: That's why I asked
5 when the appropriate --

6 CHAIRPERSON MITTEN: Right. I didn't know
7 what you were going to say.

8 VICE CHAIRMAN HOOD: Because I'm looking
9 at 26 over here and --

10 CHAIRPERSON MITTEN: Right. So let's just
11 wait until the next section, and then we'll take that
12 up.

13 VICE CHAIRMAN HOOD: Okay.

14 CHAIRPERSON MITTEN: Twenty-six-oh-six
15 point one (f), "The height of a stealth structure
16 shall be permitted by right to a height of 80 feet in
17 all residential zoning districts and 120 feet in all
18 other zoning districts." That suggests to me that
19 that would be a free-standing, ground-mounted stealth
20 structure, but it could be interpreted, and I'm sure
21 will be if we don't fix it, that it could be a roof-
22 mounted or a building-mounted stealth structure that
23 could be that tall on top of something. So I don't
24 know if we want to just say the height of a ground-
25 mounted stealth structure or would that --

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1 MR. STEINGASSER: Yes. I think you're
2 absolutely right.

3 CHAIRPERSON MITTEN: Would you turn on
4 your mic when you talk to us?

5 MR. STEINGASSER: Excuse me. I'm sorry.
6 I think you're absolutely right. We need to
7 distinguish that, and that was the intent, but that's
8 --

9 CHAIRPERSON MITTEN: Okay.

10 MR. STEINGASSER: -- not how it reads.

11 CHAIRPERSON MITTEN: Okay.

12 COMMISSIONER PARSONS: Would this permit,
13 and I'm not sure it's a bad idea for somebody to build
14 a steeple as an architectural element in a community
15 with no church? In other words --

16 (Laughter.)

17 COMMISSIONER PARSONS: Or a silo, to make
18 my point, without a farm. But that is to -- and I
19 would encourage this. I'm not saying we need steeples
20 and silos but it would seem from the next section that
21 we're talking about not just existing cupolas and
22 steeples and architectural elements but proposed --
23 not redwood trees, although redwood trees are quite
24 handy because they're available. Do you see my point?

25 I mean somebody could design some spectacular little

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1 piece of architecture that housed the antennae. That
2 wouldn't be precluded, would it? It would just be up
3 to the Office of Planning and their particular taste
4 that week or month as to whether silos fit in Chevy
5 Chase.

6 MR. STEINGASSER: That's true.

7 COMMISSIONER PARSONS: Okay.

8 MR. STEINGASSER: That's true.

9 COMMISSIONER PARSONS: I wanted to go to
10 the next section, what is a fence support as a stealth
11 structure?

12 MR. STEINGASSER: Fence support, if you
13 think about like ball field fences, the back fence.

14 COMMISSIONER PARSONS: Oh, I see.

15 MR. STEINGASSER: Obviously, you're not a
16 big athlete here. That has the --

17 COMMISSIONER PARSONS: I'm into split
18 rail, and I'm trying to figure out.

19 (Laughter.)

20 Okay. I missed that the last time, I
21 guess.

22 CHAIRPERSON MITTEN: Okay. And on trees,
23 on 2602.2, are you meaning artificial trees or real
24 trees?

25 MR. STEINGASSER: They would be artificial

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1 trees.

2 CHAIRPERSON MITTEN: Can we say artificial
3 trees?

4 COMMISSIONER PARSONS: That would be good.

5 CHAIRPERSON MITTEN: Okay. Okay. Now
6 we'll go to exempted antennas. So the question that
7 Mr. Hood had put to Ms. Steingasser was --

8 COMMISSIONER MAY: Can we go back to trees
9 for just a second?

10 CHAIRPERSON MITTEN: Yes.

11 COMMISSIONER MAY: I'm sorry. Mr.
12 Parsons, do you have an opinion on the false tree
13 antenna system? I mean we had just one example I
14 think that was shown to us in the various package.
15 And I mean, granted, that may have been a monopole,
16 but --

17 COMMISSIONER PARSONS: The only stealth
18 trees that look well are surrounded by white pine
19 trees. They do not belong in a deciduous forest. And
20 they're quite successful. We plan to use one at Great
21 Falls, Virginia, for instance.

22 COMMISSIONER MAY: Okay.

23 COMMISSIONER PARSONS: Where there are a
24 cluster of trees. But the antennas are always higher
25 than the canopy of the trees that are there, and when

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1 you get a deciduous forest with no evergreen in it,
2 they just look crazy. Next time you're going up the
3 Garden State Parkway there's --

4 COMMISSIONER MAY: Well, that's the one
5 that I think of every time. And that's why I asked --
6 wanted to ask you what you thought, because --

7 COMMISSIONER PARSONS: There's one at
8 Mount Vernon, believe it or not, and it's surrounded
9 by, in that case, hemlocks, I think, and it's
10 comfortable. Although everybody was outraged when
11 Mount Vernon, the premier historic resource of this
12 region, said, "We're going to put up an antenna," but
13 it worked pretty well.

14 COMMISSIONER MAY: Okay. All right.
15 Well, that's reassuring. Thank you.

16 CHAIRPERSON MITTEN: Okay. Exempted
17 antennas. So the question is have you had a chance to
18 review the submission from Mr. Donohue on behalf of
19 OCTO?

20 MR. STEINGASSER: Yes, ma'am, I did. I
21 felt that it wasn't necessary to amend the regulations
22 to accommodate the OCTO request. The new Section
23 2607.4 spells out, and this is from the existing
24 regulations carried forward, "An antenna which does
25 not comply with the above requirements or limitations

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1 may be permitted subject to the requirements of 2603
2 and 2605, which are the OPM special exception
3 reviews." And that has always worked very well and
4 tends to accommodate changing technology. And I felt
5 that that provision, as long as we carried it from the
6 existing regs forward, would accommodate reengineering
7 the numbers for technology today when we're talking
8 about merely increasing height or width of an antenna.

9 CHAIRPERSON MITTEN: Does that address
10 your question so far, Mr. Hood?

11 VICE CHAIRMAN HOOD: You know, my question
12 actually was 26 -- on what Mr. Donohue provided is
13 2601.1(d).

14 CHAIRPERSON MITTEN: The old --

15 VICE CHAIRMAN HOOD: I'm sorry, 2606.1(d).

16 CHAIRPERSON MITTEN: Yes. This would be
17 the new 2607.1, there is no d. He's added d is what
18 he's done.

19 VICE CHAIRMAN HOOD: Right. Right. I
20 guess that was my question. So I guess she answered
21 that she feels like 2607.4, I believe, Ms.
22 Steingasser, is what you said, will address that?

23 MR. STEINGASSER: Yes, sir. Are you
24 referring to located entirely behind the no taller
25 than parapet walls?

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1 CHAIRPERSON MITTEN: No. He's --

2 VICE CHAIRMAN HOOD: Actually, it's the
3 old -- on his -- the letter he supplied was 2606.1(d).

4 And, actually, on your 20 whatever it is, it's been
5 excluded.

6 CHAIRPERSON MITTEN: It's that paragraph
7 that your hand is on.

8 MR. STEINGASSER: Okay. We do have some
9 -- oh, I see. See, we have the emergency 911 of
10 Subsection C that we limit to 18 inches. This
11 Subsection D goes to the ancillary equipment which
12 would be the equipment shelters.

13 VICE CHAIRMAN HOOD: Okay. Well, just
14 thought I'd ask but if you feel comfortable, I'm fine
15 it.

16 MR. STEINGASSER: I think we have already
17 accommodated most of the Office of Technology's
18 antenna request through the current zoning
19 regulations.

20 CHAIRPERSON MITTEN: Let me just ask you a
21 couple of follow-up questions on that before we get
22 into some of the specifics of 2607. One of the
23 provisions he was -- one of the exemptions he was
24 asking for is for the Federal Government and we don't
25 have any control over the Federal Government anyway.

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1 So they have an exemption by their own rules.

2 Now, a couple of things that he added or
3 need clarification is in the chart I think he was
4 going for no number limit on the whip antennas.

5 MR. STEINGASSER: Yes, that's my
6 understanding.

7 CHAIRPERSON MITTEN: And is that the
8 antenna that's most likely to be used by the police,
9 fire and EMS? Is that why --

10 MR. STEINGASSER: Yes.

11 CHAIRPERSON MITTEN: Yes? Well, one of
12 the things that -- I mean you seem satisfied, and if
13 you're satisfied, then we should be satisfied too,
14 would be to just eliminate the number restriction for
15 fire, police and EMS on whip antennas, and that would
16 -- I mean that's another way to go. Instead of having
17 to have some kind of blanket exemption, we can just
18 say, "Okay, you're not bound by the number
19 limitation."

20 MR. STEINGASSER: I think that would
21 address their concerns.

22 CHAIRPERSON MITTEN: Okay.

23 MR. STEINGASSER: That would go a long way
24 to address --

25 CHAIRPERSON MITTEN: So we could do maybe

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1 a little something, a little footnote or whatever that
2 says that the number limitation in the chart on what
3 would be the new 2607.3 on whip antennas does not
4 apply to those dedicated to the provision of emergency
5 services, such as police, fire and EMS for the
6 District of Columbia.

7 Okay. There's also something that needs
8 to be clarified because there's conflicting text here.

9 The diameter of the whip antenna he seemed to like
10 the seven-inch version and I think you all liked the
11 two-and-a-half-inch version, so which is it meant to
12 be?

13 MR. STEINGASSER: Well, two and a half is
14 what's currently -- oh, I see, there is both in there,
15 isn't there -- is what's currently on the regulations.

16 Again, it came to -- it's seven this year and in ten
17 years it will be something else. So that's I felt
18 that 2607.4 allowed for the dimensions to change and
19 --

20 CHAIRPERSON MITTEN: Okay.

21 MR. STEINGASSER: -- and allowed for the
22 quantity to change.

23 CHAIRPERSON MITTEN: Okay. This is still
24 on the whip antennas. The way that the text is worded
25 it says, "located on a principal building." And the

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1 text that is being proposed by OCTO is, "on a
2 principle building, tower or monopole." So I just
3 want to be sure that this is what you intend is the --
4 we're only talking about whip antennas on principal
5 buildings.

6 MR. STEINGASSER: In this section we are.
7 When we get -- later when we get into the towers and
8 monopoles it allows for the additional --

9 CHAIRPERSON MITTEN: Okay.

10 MR. STEINGASSER: -- other additional
11 antennas.

12 CHAIRPERSON MITTEN: Okay.

13 MR. STEINGASSER: And it doesn't
14 distinguish.

15 CHAIRPERSON MITTEN: Okay. That all
16 sounds good. Just backing up a little bit, 2607.1(a),
17 I think. What are extensions of the penthouse walls?
18 "Entirely enclosed on all sides within a building or
19 by the penthouse walls or extensions of the penthouse
20 walls."

21 MR. STEINGASSER: They could be -- how
22 would you describe -- if there's a penthouse on the
23 roof, I guess you could easily construct oftentimes
24 with stealth, and I know they've done that down here
25 at 1 Massachusetts. You can -- I'm not being very

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1 clear.

2 CHAIRPERSON MITTEN: Are you just meaning
3 make the penthouse bigger?

4 MR. STEINGASSER: Right.

5 CHAIRPERSON MITTEN: Is that what you
6 mean?

7 MR. STEINGASSER: Yes.

8 CHAIRPERSON MITTEN: Okay.

9 MR. STEINGASSER: You would just extend --
10 you would just create a false extension of the
11 penthouse.

12 CHAIRPERSON MITTEN: Okay. I guess what I
13 would not want the interpretation to be is that we're
14 not intending that anyone would have the right or
15 we're encouraging them to try and exceed the height of
16 roof structures. It's not up, it's around.

17 MR. STEINGASSER: Typically, it's around.

18 CHAIRPERSON MITTEN: Okay. I think we can
19 express that better. So if we could --

20 MR. STEINGASSER: Okay.

21 CHAIRPERSON MITTEN: -- just revisit that
22 language, because it wasn't clear to me. And in that
23 same section, "and which is not the primary use within
24 the building." So the question is if a building -- I
25 don't know if this would ever happen -- but a building

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1 constructed solely for the purpose of housing an
2 antenna would not be exempt. Is that what I'm
3 reading?

4 MR. STEINGASSER: That's correct.

5 CHAIRPERSON MITTEN: Okay. And why not?

6 MR. STEINGASSER: Well, we're going to
7 discuss that very issue in about four weeks when we
8 talk about optical transmission nodes --

9 CHAIRPERSON MITTEN: Okay.

10 MR. STEINGASSER: -- as a text amendment.

11 CHAIRPERSON MITTEN: So I should trust
12 that this is right for right now.

13 MR. STEINGASSER: The intent -- in the
14 past, there have been structures that are built, and
15 rightfully so because they're part of the technology,
16 to house antennas, and that's their purpose. In the
17 optical transmission node -- you know, there are nodes
18 throughout the City that allow for interactive, high-
19 speed Internet exchange and cable service -- and the
20 cable company, primarily, is operating them now, but
21 the intent was that the intent was that those
22 structures be regulated as separate structures and not
23 considered an exempt antenna.

24 CHAIRPERSON MITTEN: Okay.

25 MR. STEINGASSER: That was the purpose.

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1 CHAIRPERSON MITTEN: Because they could be
2 unattractive?

3 MR. STEINGASSER: They could be
4 unattractive.

5 CHAIRPERSON MITTEN: Okay.

6 MR. STEINGASSER: They could be quite
7 large.

8 CHAIRPERSON MITTEN: Okay. Twenty-six-oh-
9 seven point two, "penthouse and parapet walls may
10 include an opaque membrane covering a port in front of
11 the antenna." What I guess I'm concerned about is
12 that we would have either -- if there were some kind
13 of screening requirement, let's say, and the antenna
14 was sticking up above a parapet wall and you said,
15 "Oh, well, you can just put an opaque screen up," and
16 you have this kind of little thing that doesn't fit in
17 with anything because you just pop a screen up and
18 say, "Well, it's screened," and it just sits up above
19 the parapet wall and it doesn't fit in and it's not a
20 uniform height and so forth. And I don't -- am I
21 describing what I'm envisioning as being --

22 MR. STEINGASSER: I think I understand.
23 Something like a fan would -- but that's certainly not
24 the intent. This, again, is language that's carried
25 forward from the existing regulations.

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1 CHAIRPERSON MITTEN: Okay. Well, I mean
2 if anything occurs to you about how to clarify that, I
3 would welcome it.

4 Twenty-six-oh-seven point three, on the
5 dish antennas and back into the chart, I just wanted
6 to add where it says, "not taller than eight feet,"
7 "not taller than eight feet, as measured from the roof
8 surface on which it is mounted," so that we know what
9 we're measuring from.

10 And I just wanted to verify my
11 understanding of reading this, which is since we're
12 talking here in the chart about dish antennas on a
13 roof, that dish antenna, and this goes back to the
14 concern that Mr. May has had, dish antennas that are
15 building-mounted would then have to meet the test of
16 2605, Dish Antennas Building-mounted, because there's
17 no exemption in this section. The only exemption for
18 a dish is a roof-mounted dish.

19 MR. STEINGASSER: That's correct.

20 CHAIRPERSON MITTEN: Okay. Is that what
21 you had to do, Mr. May?

22 COMMISSIONER MAY: No. It wasn't a dish.

23 CHAIRPERSON MITTEN: Oh, it wasn't a dish.
24 Okay, never mind. Okay. Anything else on the
25 exempted antennas, 2607?

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1 Twenty-six-oh-eight, Additions to Existing
2 Towers and Monopoles Matter of Right. Twenty-six-oh-
3 nine, Towers and Monopoles in the M Zone. I just
4 wanted to verify my understanding of what is lettered
5 H but should be lettered F because there's other
6 sections that have been deleted. It relates only to
7 monopoles even though the section relates to antenna
8 towers and monopoles, "arranging for co-location."
9 Now, maybe it's a given that you have co-location with
10 a tower, I don't know. But it says, "A written
11 statement shall be provided agreeing to design," I
12 would say, "of proposed monopole," but it doesn't say
13 "or antenna tower."

14 MR. STEINGASSER: It should include a
15 tower.

16 CHAIRPERSON MITTEN: Okay. And then I was
17 thinking that we should suggest that there be a period
18 of time for the initial provider or the owner to use
19 the available space. Otherwise they'll just, perhaps,
20 although perhaps not, they might say, "We're going to
21 use that eventually," and just keep it, rather than
22 putting a time limit. Do you follow me on that one?
23 Where it says that they have to "make the array space
24 available on a commercial basis for co-location by any
25 telecommunications service provider if unused by the

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1 initial telecommunication service provider or the
2 owner." And I'm just suggesting within a certain
3 period of time if it's unused.

4 MR. STEINGASSER: Okay.

5 CHAIRPERSON MITTEN: I'm not going to
6 suggest what that is and if you would come back to us
7 with a suggestion.

8 MR. BERGSTEIN: I viewed that, though, as
9 really being not a -- it would be if in fact it's
10 unused. In other words, what the requirement is that
11 you show that it's capable of allowing for co-
12 location. And if it is used by the telecom provider,
13 then co-location wouldn't be required. But if it's
14 not used, it would always be required. So it was
15 really a present -- it was intended to represent a
16 present tense responsibility.

17 CHAIRPERSON MITTEN: Okay. I guess I
18 didn't read it that way. So if we could clarify that
19 --

20 MR. BERGSTEIN: All right. Sure.

21 CHAIRPERSON MITTEN: -- that would be even
22 better. And then I would suggest that the language
23 that is included later as 2612.3, which is, "No
24 advertising may be placed on the monopole or tower,"
25 would be appropriate here, because even though it's

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1 the M Zone we don't need to gob it up with
2 advertising. What do people think about that?

3 VICE CHAIRMAN HOOD: I would agree with
4 you, Madam Chairman.

5 COMMISSIONER PARSONS: Could we make sure
6 that's also included on dish antennas where applicable
7 throughout? It just entered my mind but there's some
8 that are -- they become little billboards.

9 CHAIRPERSON MITTEN: You're right, they
10 do. Well, let's ask that the appropriate place to
11 insert that --

12 COMMISSIONER PARSONS: Thank you.

13 CHAIRPERSON MITTEN: -- would be
14 discovered and inserted. All right.

15 Twenty-six-ten, Towers and Monopoles in
16 Campus Plans. I just want to be sure that since the
17 campus plans -- the requirement for campus plans
18 starts in R-1, I just want to make sure that we're
19 going to capture the provisions and all the
20 restrictions and at least the spirit and intent of
21 this chapter when antennas are reviewed as part of the
22 campus plan, because they're potentially going to be
23 adjacent to the low-density single family, and we have
24 a lot of provisions that are intended to protect that,
25 and I wouldn't want to lose those. And maybe -- well,

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1 we're going to be revisiting the special exception
2 standards in just a second, so maybe that will be
3 captured at that point. So I'll just raise that for
4 the time being and we can just think about that when
5 we finish up with the special exception standards.

6 Office of Planning report, 2611. Twenty-
7 six-eleven point two, I would just suggest that you
8 would never shorten the time period, you would only
9 lengthen the time period. If you want to shorten the
10 time period, just write the report. Yes?

11 MR. STEINGASSER: Yes, ma'am.

12 CHAIRPERSON MITTEN: "Yes" is fine.

13 (Laughter.)

14 CHAIRPERSON MITTEN: Twenty-six-twelve,
15 Special Exception Criteria. So what we have, as Mr.
16 Bergstein suggested when we began, is we have some
17 alternative language that has been suggested to us
18 that would prevent us from stumbling into a situation
19 where we would be requiring -- we would have a
20 requirement of the ordinance that would lead to an
21 illegal preemption under the Telecommunications Act.
22 So we have a new -- I'm sorry, I'm in the wrong -- I'm
23 jumping ahead, that's 2613. Just hold on for a
24 second.

25 Twenty-six-twelve, this is the special

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1 exception criteria for antennas. What I was going to
2 suggest on B, 2612.1(b), is that it read, "A map and
3 explanation of the area being inadequately served,"
4 and then this is the additional language, "that
5 necessitates installation of the proposed antenna."
6 Anybody have a problem with that? I just think it
7 carries the thought through.

8 Twenty-six-twelve point one (c), what's a
9 facility site? It says, "Map indicating the location
10 of any other antennas and facility sites."

11 MR. STEINGASSER: Typically, a facility
12 site would be other monopoles, other antennas, other
13 sites where there is an antenna facility.

14 CHAIRPERSON MITTEN: Okay. I just want to
15 be sure that somebody doesn't say, well, that's not --
16 we don't want people interpreting facility sites. So
17 if we could add specificity to that --

18 MR. STEINGASSER: Okay.

19 CHAIRPERSON MITTEN: -- that would help.
20 So we get the kind of report that we're looking for.
21 Would that include installations on public space?

22 MR. STEINGASSER: I believe it would, yes.

23 CHAIRPERSON MITTEN: Okay. I think we
24 should say that too.

25 And then we have a suggestion from

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1 Corporation Counsel that the map should not only show,
2 this is in C still, that the map should not only show
3 the facilities, antennas and otherwise, of the
4 applicant but those of other providers so that one can
5 determine whether co-location is possible. Now, the
6 problem is I don't know if that kind of information
7 given -- I mean it's not like there's a map you can go
8 to and it's got all these pins in it where everything
9 is. So an applicant certainly knows where their
10 antennas are, but they don't necessarily know where
11 someone else's. Maybe it's -- I think antenna towers
12 and monopoles are easier to find, so maybe that would
13 be the idea, that we would add language to show the
14 antenna towers and monopoles of other providers.
15 Would that be --

16 MR. STEINGASSER: I think we would have to
17 limit that.

18 CHAIRPERSON MITTEN: Okay.

19 MR. STEINGASSER: It's almost impossible
20 for one carrier to track all the locations of other
21 carriers.

22 CHAIRPERSON MITTEN: Okay. Then I think
23 maybe we should include that.

24 In 2612.1(d), where it says, "roof-
25 planted," and I just think we should add, "if

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1 applicable," because this could be a ground-mounted
2 antenna.

3 We have a suggestion from Corporation
4 Counsel for 2612.1(g). In the next section when we
5 talk about -- wait, just bear with me a second. In
6 the next section when we talk about trees and you had
7 added language, "The relative height of the antenna
8 tower or monopole to the tops of the surrounding trees
9 within one-quarter mile radius of the proposed site as
10 they presently exist," and that's sort of parallel
11 language for the antenna. Is that what you -- you
12 know, the quarter mile, we need a distance there. Is
13 that what you -- or didn't you intend that same kind
14 of --

15 MR. STEINGASSER: It should, yes. It
16 should --

17 CHAIRPERSON MITTEN: Okay.

18 MR. STEINGASSER: -- reflect the same.

19 COMMISSIONER PARSONS: In F, do we mean a
20 photo simulation of the antenna or -- I know in a
21 couple of cases they've simply brought in a picture of
22 an antenna at a different location and said, "This is
23 the type we plan to erect." Do you mean here that
24 that should be a photo simulation of that antenna?

25 MR. STEINGASSER: As it's written here, it

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1 was intended just a photograph of the antenna, so that
2 we would understand --

3 COMMISSIONER PARSONS: From a catalogue or
4 whatever.

5 MR. STEINGASSER: -- what type the antenna
6 was, right.

7 CHAIRPERSON MITTEN: Did you have anything
8 you wanted to add on that?

9 COMMISSIONER PARSONS: I guess I would ask
10 why? You say, "in this case."

11 MR. STEINGASSER: Well, in this section
12 this is just the general antenna subject to BZA
13 approval, so it's not specified in this section
14 whether we're talking about antennas, panels, dishes,
15 monopoles. So that's why this picture was just to
16 provide us with a graphic representation of what is
17 the antenna in this case.

18 COMMISSIONER PARSONS: Okay.

19 CHAIRPERSON MITTEN: Twenty-six-twelve
20 point three, this is prohibition on advertising on a
21 monopole or tower. I think that, along with the
22 prohibition on having it on dishes, that it needs to
23 be a different place. And I had suggested it earlier,
24 but I think it probably needs to be either several
25 places or in a more overreaching spot. And I'll leave

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1 it to you guys to figure out where that is, but I
2 think it should be moved.

3 Okay. Now we're at 2613, which is the
4 special exception criteria for towers and monopoles.
5 And we have the suggested language from the
6 Corporation Counsel, and you have in front of you, I
7 believe, the suggested revised 2613.6? Yes.
8 Everybody have that?

9 MR. BERGSTEIN: And if I could just point
10 out, it really would also call for the deletion of
11 2613.11 because it includes all those aspects of it.
12 In other words, we just moved up to the first place
13 where we put a section.

14 CHAIRPERSON MITTEN: Yes. Yes. Thank you
15 for -- yes. And I guess I'd just make a couple of
16 additions. In D where it says, "The proposed antenna
17 or monopole," it should say "antenna tower or
18 monopole." And then I had -- the rest of them I have
19 little editorial things that I would change. But
20 other than that, I would propose that we insert that
21 language and delete the existing 2613.11, as Mr.
22 Bergstein suggested.

23 There were a couple of other deletions
24 that would go along with that so that we don't get
25 into trouble. That would be 2613.2(d) and (e).

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1 Actually, they're listed as D and E, but if you did
2 the relettering properly, they're E and F. It's
3 language for CR where it says, "If the board considers
4 it appropriate in furthering the objectives of the
5 mixed-use district." And then the similar language in
6 W. If we add 2613.6, as proposed, then I think those
7 need to come out, because that could set up a
8 conflict.

9 Twenty-six-thirteen point three, where is
10 says that, "An antenna tower in conjunction with a
11 studio or in conjunction with the erection, alteration
12 or use of a building for transmission or reception
13 equipment on the same lot shall be permitted." Okay?

14 So we've got an antenna tower and it's got to be used
15 in conjunction with something else. And I just want
16 to be sure that that's what's intended. It implies
17 that the tower -- and maybe it can't -- it implies
18 that the tower can't stand alone unlike a monopole.
19 And is that what was intended?

20 MR. STEINGASSER: I'm sorry, I've lost my
21 way here. What section?

22 CHAIRPERSON MITTEN: It's new 2613.3.

23 MR. STEINGASSER: Point three, okay.
24 This is existing language that was brought forward
25 from the existing regs. What it was intended, I

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1 believe, to allow for was both free-standing towers
2 and towers that had associated buildings with it.

3 CHAIRPERSON MITTEN: Okay. This doesn't
4 say -- this doesn't really have the "or" concept in
5 it, because it says, "An antenna tower in conjunction
6 with blah, blah, blah shall be permitted."

7 MR. BERGSTEIN: I would suggest that
8 that's the case. And I've always wondered about this
9 provision, that it would say, "an antenna tower,
10 either alone in or in --

11 CHAIRPERSON MITTEN: Okay. You'll be able
12 to rest easier now, Mr. Bergstein.

13 (Laughter.)

14 Okay. In 2613.4(d) and (e) again, we need
15 to remove the language related to CR and W. Twenty-
16 six-thirteen point 12(b) --

17 COMMISSIONER PARSONS: When are we going
18 to talk about 2613.6?

19 CHAIRPERSON MITTEN: I tried to do that
20 already.

21 COMMISSIONER PARSONS: I think you
22 concluded that.

23 CHAIRPERSON MITTEN: I did. But if you
24 had anything that you wanted to --

25 COMMISSIONER PARSONS: I do. Mr.

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1 Bergstein, in your research, could you give any
2 guidance as to what a significant gap would be in A?

3 MR. BERGSTEIN: It's more what it's not,
4 which would be just dead zone coverage of a small area
5 within a building that is not covered. But the courts
6 haven't really been specific; in fact, they talk about
7 it being a case-by-case consideration. But it's more
8 than a de minimis drop in coverage. That's about as
9 clear as the cases have gotten. I think in our memo
10 we tried to elaborate on some of those instances, but
11 it's not measurable by square foot.

12 COMMISSIONER PARSONS: I always worry
13 about words like that, because it may say to some that
14 -- well --

15 MR. BERGSTEIN: I think what we tried to
16 do was to use the terminology that the case law used,
17 because then we can latch onto the case law as it
18 evolves, as it's used that term.

19 COMMISSIONER PARSONS: So this term is
20 becoming a term of art, "significant gap."

21 MR. BERGSTEIN: Yes, in terms of some of
22 the circuits. There's one circuit that has not used
23 that terminology, but we're going with the majority
24 decisions. And that is the term of art that's been
25 used by the case law.

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1 COMMISSIONER PARSONS: Let me ask another
2 question. If you were dealing with the words,
3 "significant gap," in a residential area, R-1, and 20
4 or 30 houses weren't getting coverage, as opposed to
5 the individual driving down the street talking on
6 their cell phone loses the call, that's very
7 significant to that individual.

8 MR. BERGSTEIN: But I think that's the
9 type of dead zone --

10 COMMISSIONER PARSONS: But as far as
11 traveling in an area of the City --

12 MR. BERGSTEIN: That's the type of dead
13 zone if they're just turning a corner and they lose
14 the coverage, I don't think that would be considered a
15 significant gap. I think your 20, 30 houses would be
16 a significant gap. But the distinction is made
17 between dead zones, just short areas where coverage is
18 lost and a significant area where coverage is lost.

19 COMMISSIONER PARSONS: So the words,
20 "significant gap," goes to that residential zone as a
21 residential zone that we're looking at --

22 MR. BERGSTEIN: It doesn't have to be
23 contiguous for the entire zone. It has to be more
24 than just a de minimis area, but it doesn't have to be
25 the entire zone itself. It would be a significant

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1 geographic area within the zone.

2 COMMISSIONER PARSONS: That's what I
3 meant. I shouldn't use the word, "zone." Right.

4 MR. BERGSTEIN: Yes.

5 COMMISSIONER PARSONS: So it's not the
6 person passing through the zone dropping a call, as
7 they say, but rather the area of the City that is
8 deprived?

9 MR. BERGSTEIN: Yes, but it would also go
10 -- obviously, the person who is driving through the
11 zone in an area of the City and for blocks or a block,
12 and I really don't know the actual geographic
13 demarcation, but where they're driving through and
14 it's not just they've rounded a corner, they lost the
15 signal, but it would represent a continuous loss of
16 signal over a significant area.

17 COMMISSIONER PARSONS: Okay. Okay.
18 That's helpful. Thank you.

19 CHAIRPERSON MITTEN: And if I could just
20 note that in the memo it says, "Where a gap is, quote,
21 unquote, 'significant' depends not only on its
22 physical size but also on the number of consumers
23 affected." So if you're talking about people on a
24 cul-de-sac where there's not a lot of traffic, you
25 drop a call there then that's one thing. If you drop

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1 a call where there's thousands of cars going by a day
2 and everybody's dropping the call, then that's -- you
3 know, the number of -- the area might be quite small
4 but the number of people affected.

5 COMMISSIONER PARSONS: Well, the memo that
6 you're reading from is that something that could be
7 included --

8 CHAIRPERSON MITTEN: You need to turn on
9 your mic, please.

10 COMMISSIONER PARSONS: Is that memo
11 something that we should include in the record,
12 because I think this is a significant term. A
13 significant gap is going to have to be interpreted by
14 BZA. And if there's all this research that's been
15 done, how do we make that a part of the record?

16 MR. BERGSTEIN: I was going to suggest
17 that some portion of our analysis be included in the
18 final order if you care to --

19 COMMISSIONER PARSONS: Good. Oh, fine.
20 Yes.

21 CHAIRPERSON MITTEN: Okay. Twenty-six-
22 thirteen point 12(c), we have the issue of the
23 facility site again. But this says, "A map indicating
24 the location of any other antennas and facility sites
25 providing service by the applicant," but it doesn't

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1 say where. So we really don't want like a map of the
2 whole United States and stuff. So we need to have a
3 delineation for that, and I'll leave that up to you to
4 suggest what that might be.

5 On G, 2613.12(g), I just want to be sure
6 what's being requested here is "a commitment to permit
7 the co-location of at least three antenna arrays on"
8 -- this says, "on a monopole." And that's more than
9 what is required for a monopole as a matter of right.

10 What's required as a matter of right is that if
11 they're not going to use it -- well, they have to make
12 at least -- the monopole has to be able to hold, I
13 guess, at least three antenna arrays but not that they
14 have to necessarily permit co-location. So did you
15 want that to be like a parallel --

16 MR. STEINGASSER: It should be consistent,
17 parallel, yes, ma'am.

18 CHAIRPERSON MITTEN: Okay. So we're going
19 to make that parallel to 2609.1(f).

20 MR. BERGSTEIN: And, actually, I was --

21 CHAIRPERSON MITTEN: Would you turn your
22 mic on for me?

23 MR. BERGSTEIN: Sorry. I hit it one too
24 many times. I was actually going to suggest changing
25 it from "if unused" to "whenever unused" to get that

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1 concept.

2 CHAIRPERSON MITTEN: That's good, like
3 that. Okay. Anybody else on 2613? Twenty-six-
4 fourteen, Non-conforming Antennas. Twenty-six-
5 fourteen point two (b), I was going to suggest, this
6 says, "The temporary installation shall be removed no
7 later than one year after the non-conforming antenna
8 stops functioning." I was going to suggest that since
9 we don't know when the original non-conforming antenna
10 stopped functioning, that the temporary replacement is
11 just allowed for a year.

12 Twenty-six-fourteen point two (c), this
13 has to do with the discontinuation of -- or the non-
14 functioning of the non-conforming antenna. This
15 really stands alone. It's not related to the
16 temporary replacement, which is what 2614.2 is about.

17 So I would just suggest that that should be pulled
18 out and be a separate little subsection.

19 And I would under D, 2614.2(d), that it
20 read -- that, basically, the first line be deleted and
21 just say, "The cost of a temporary replacement antenna
22 shall not be considered by the Board of Zoning
23 Adjustment as a basis for approval of the special
24 exception to install a conforming replacement."

25 Twenty-six-fourteen point three, "An

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1 antenna that was legally permitted prior to the date
2 of adoption of this chapter shall be considered a
3 conforming antenna." What I want to -- first, let me
4 understand, does that include -- is that meant to
5 include only those antennas that have actually been
6 approved through a building permit process and not
7 just -- and would not include those antennas that may
8 have been legally permitted under the old regs but
9 were never approved through the building permit
10 process? Is it just meant to include those that went
11 through the process?

12 MR. STEINGASSER: Yes. I think it would
13 extent to also include those that might have been
14 through the BZA process but have not yet gotten
15 building permits.

16 CHAIRPERSON MITTEN: Okay. But anybody
17 who did not get a building permit and just threw up
18 that antenna --

19 MR. STEINGASSER: This is not intended to
20 cover them.

21 CHAIRPERSON MITTEN: Okay. That's good.
22 I like that. Okay. Anybody else on 2614?

23 Twenty-six-fifteen, Equipment Cabinets and
24 Shelters? Twenty-six-fifteen point two, the intro
25 there, "If an antenna equipment cabinet or shelter is

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1 provided on the roof of a building or structure." I
2 just want to make sure that that's not going to be
3 construed to be a roof structure -- I mean a -- yes, a
4 roof structure, the roof of a roof structure. Sort of
5 the roof of a penthouse. I don't want them putting
6 those on the roofs of penthouses and then adding
7 height that way. So if we could just add something to
8 clarify that, that would make me feel better.

9 MR. STEINGASSER: Okay.

10 CHAIRPERSON MITTEN: Then 2615.3, which
11 says that, "An equipment cabinet or shelter that can
12 comply with the requirements goes to the special
13 exception process," but the special exception
14 requirements don't work well for -- the ones that
15 we've specified in 2612, they don't work well for
16 cabinets and shelters, because the requirements are
17 totally different. So I think we need to revisit
18 that.

19 MR. STEINGASSER: Okay.

20 CHAIRPERSON MITTEN: And under 2616,
21 Removal of Antennas, Antenna Towers, Monopoles, blah,
22 blah, blah, point 1, is it meant to say -- where it
23 says, "owner," is it meant to say, "property owner,"
24 because the owner of the thing might be gone.

25 MR. STEINGASSER: It should be property

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1 owner; yes, ma'am.

2 CHAIRPERSON MITTEN: Okay. And then on
3 that same section, is one-year exception -- the second
4 sentence, "a one-year exception," is that supposed to
5 be a one-year extension?

6 MR. STEINGASSER: Yes.

7 CHAIRPERSON MITTEN: Okay. Anybody have
8 anything else? Okay. I just wanted to note something
9 because I had neglected to say this in the beginning,
10 which is we also had a submission from the Office of
11 the People's Council that raised some interesting
12 issues, and they were suggesting that we should create
13 a fund to allow residents to have the resources to
14 hire experts so that they could develop their cases
15 and understand the proposal for towers and monopolies
16 and so forth. And it's not within our jurisdiction to
17 create a fund, only the City Council can create a
18 fund, but it raises an important issue that we will
19 have to face, whether it's through the Office of
20 Zoning or through the Office of Planning, that there
21 will need to be funding to hire technical expertise to
22 advise us to advise the Board, to advise the Office of
23 Planning. Because when these reports come in, unless
24 the Office of Planning -- and I know, Ms. Steingasser,
25 that you have become an expert on these matters, but I

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1 think we need the sort of technical expertise of an
2 engineer or something. And unless they're already
3 there, we need to get someone, either in-house or that
4 we could call on, and we need the funding for that.
5 So we'll need to think about that through the
6 budgeting process.

7 VICE CHAIRMAN HOOD: Madam Chairman?

8 CHAIRPERSON MITTEN: Yes.

9 VICE CHAIRMAN HOOD: Could I ask that the
10 Office of Zoning send a letter to Office of People's
11 Council letting them know that -- if it hasn't already
12 been done -- that that is not in our jurisdiction so
13 they can look for some other innovative ways to help
14 citizens to be able to deal with that? Maybe they can
15 spearhead something in another venue.

16 CHAIRPERSON MITTEN: Thank you. Mr.
17 Bastida, would you send a letter on our behalf to that
18 effect?

19 SECRETARY BASTIDA: Yes. I would like you
20 to take a look at it --

21 CHAIRPERSON MITTEN: I would like you to
22 turn on your microphone.

23 SECRETARY BASTIDA: Yes. We'll do that,
24 but I would like you to look at the letter before I
25 send it out.

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1 CHAIRPERSON MITTEN: Absolutely.

2 SECRETARY BASTIDA: Thank you.

3 CHAIRPERSON MITTEN: Happy to do that.

4 All right. So we have some language, finally, that I
5 think has gestated sufficiently that we can take
6 proposed action on Zoning Commission Case Number 01-
7 02, allowing for some non-substantive editorial
8 changes that I think we probably all would like to
9 suggest some little changes here and there. And we've
10 gone through and made various proposals and anything
11 that was agreed to by consensus would be included in
12 the proposed rulemaking. And I would move approval.

13 COMMISSIONER PARSONS: Second.

14 CHAIRPERSON MITTEN: All right. Is there
15 any further discussion? All those in favor please say
16 aye. Those opposed please say no.

17 (Commission members vote.)

18 CHAIRPERSON MITTEN: Ms. Sanchez?

19 MS. SANCHEZ: Yes. Staff would record the
20 vote five to zero to zero. Commissioner Mitten
21 moving, Commissioner Parson seconding, Commissioners
22 Hannaham, Hood and May in favor of approving proposed
23 action for Case Number 01-02 with the modifications
24 discussed.

25 CHAIRPERSON MITTEN: Thank you.

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1 SECRETARY BASTIDA: Madam Chairman, when
2 we pose this as a rulemaking, would you like to just
3 have the standard 30 days or you want to extend that
4 comment period time?

5 CHAIRPERSON MITTEN: I'd like to get this
6 back while it's still fresh in my mind. I think 30
7 days is fine.

8 SECRETARY BASTIDA: Okay.

9 CHAIRPERSON MITTEN: I mean people have
10 had ample opportunity to weigh in on all this
11 throughout the process, so I think unless someone
12 feels strongly to the contrary.

13 SECRETARY BASTIDA: Okay. Thank you,
14 Madam Chairman.

15 CHAIRPERSON MITTEN: Okay. Now we're
16 ready to move to Final Action.

17 Okay. Now, we're ready to move to final
18 action, and the first case under final action is
19 Zoning Commission Case Number 02-32, which is the
20 Georgetown University Performing Arts Center, and this
21 is a further processing case to permit Georgetown
22 University to renovate and expand the existing Ryan
23 Administration Building into a Performing Arts Center.

24 This proposal was anticipated in the approved
25 Georgetown University campus plan for 2000 to 2010.

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1 Following the hearing, we received
2 additional submissions from the Applicant, the
3 Burlieth Citizens' Association, the Citizens'
4 Association of Georgetown and several individuals. We
5 also, as I understand it, either earlier today or late
6 Friday, we received a new submission by the Applicant,
7 which is simply the draft order. But we would need to
8 reopen the record to receive that submission. Is
9 there any objection to receiving that submission? All
10 right. We haven't had a chance to look at that yet,
11 and, appropriately, there's no response period
12 provided to parties because it's just a draft order;
13 there should be no new information.

14 What I'd like to suggest is that -- in the
15 hearing we overheard overwhelming support for the
16 project, but we have a preliminary matter to decide,
17 because there was testimony that challenged the
18 University's compliance with their campus plan order,
19 and we must determine substantial compliance as a
20 preliminary matter to our decision-making. So what I
21 would like to suggest is that tonight we determine the
22 compliance issue and then after we have a chance to
23 review the draft order, we can take up the case on the
24 merits. Depending on what we find by way of
25 compliance, we would take that up at our March meeting

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1 in two weeks, and that will give us a chance to review
2 the draft order. Is everyone amenable to that? Okay.

3 The challenges that have been made to the
4 University's compliance are with Condition 2,
5 regarding enrollment, Condition 3, regarding off-
6 campus student housing, Condition 9, regarding reports
7 of student misconduct, and Condition 14, regarding
8 registration of student vehicles. So I think first we
9 need to decide whether or not there has been or is, I
10 should say, non-compliance, and then we would need to
11 determine whether that was substantial or not.

12 I'll just raise the -- I'll just lay out
13 the first issue, which is that regarding the
14 enrollment cap. At the time of the hearing, it was
15 reported to us that there were 5,754 students as of
16 November 20, 2002, which was 127 above the cap of
17 5,627. The Applicant represented that the requirement
18 is -- or their view of the requirement is that it's an
19 average for the academic year and that it's not
20 intended to be a snapshot at any given point in time.

21 And the community's position is that it doesn't say
22 that and that it shouldn't be interpreted that way.
23 And I would just add that now, in the latest
24 submission that I'm having trouble putting my hand on,
25 the University represented to us that their spring

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1 enrollment numbers show that they're now at 5,166,
2 which is below the cap.

3 So the issue of non-compliance is, on that
4 particular condition, seems to have evaporated, but I
5 think what's important for us is that we need to
6 decide whether the interpretation by the University is
7 correct in terms of the averaging, because this is
8 potentially going to be a problem again in the future.

9 COMMISSIONER PARSONS: Well, not only with
10 this University but others.

11 CHAIRPERSON MITTEN: Certainly.

12 COMMISSIONER PARSONS: To my knowledge,
13 none of the others have come to have a need to write
14 to us in this regard. In other words, we haven't
15 heard from another university where there's a cap
16 saying, "Well, of course you meant averaging."

17 CHAIRPERSON MITTEN: Not on this specific
18 issue; no, I don't think so. And I would just --
19 maybe I'll just read what Condition Number 2 says
20 specifically. "The Applicant shall not increase
21 undergraduate enrollment above a cap of 5,627. This
22 cap shall apply to traditional, full-time
23 undergraduate students; that is, undergraduate
24 students who require housing."

25 I would like to suggest that knowing the

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1 BZA, as I have come to know the BZA, particularly in
2 orders that have been drafted in the last few orders,
3 that the orders mean what they say. And if it was
4 intended that there would be any averaging, it would
5 say that. It doesn't say academic year enrollment; it
6 says enrollment. And the fact that in Condition 17
7 there's a requirement for the Applicant in a further
8 processing application to list, among other things,
9 the actual enrollment of traditional undergraduate
10 students as of 30 days prior to the hearing date, that
11 suggests that they wanted to know the enrollment at
12 the time of the application, not some average number.

13 So I would suggest that the interpretation
14 is a strict interpretation of the language of
15 Condition 2 and that it's the enrollment -- the
16 enrollment cap is a cap, it's not an average.

17 COMMISSIONER PARSONS: I would agree. I
18 don't see how you can read it any other way.

19 CHAIRPERSON MITTEN: Anyone else on the
20 subject?

21 COMMISSIONER MAY: I would -- I think it's
22 worth taking note of the argument that has been made
23 by the University, that they have been consistently
24 calculating enrollment numbers in this fashion. Now,
25 I don't see any indication, I haven't looked into this

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1 very far, that the BZA in approving the plan
2 acknowledged that as the method of calculation. But
3 if in fact that was the method of calculation and it
4 was known that it was the method of calculation, I
5 think that for us to say at this point, no, it's an
6 absolute cap would be a significant change from what
7 they have been -- what the University thought they had
8 agreed to. In other words, they may have pleaded for
9 a higher cap if in fact it was going to reflect the
10 peak, peak, peak in the peak semester.

11 CHAIRPERSON MITTEN: Right. Right. What
12 I would suggest that we do if -- I take your point and
13 I think based on what we have in front of us I think
14 the interpretation -- a strict interpretation is
15 appropriate. But in the future when they come back to
16 us again, if they want to continue to make the average
17 interpretation, then they're going to have to show us
18 why -- how in fact that was in the BZA's mind and that
19 BZA just overlooked actually writing it. And, Mr.
20 Bergstein, is there any way that this -- if the
21 University wanted to revisit this particular provision
22 because it's not clear or they disagree with the
23 interpretation of it, is there a mechanism for them to
24 come forward and --

25 MR. BERGSTEIN: Well, I recall that there

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1 was a cap in the previous campus plan order, but I
2 don't know if that specific condition about the 30
3 days before the application was there. But in any
4 event, they would have had to have shown compliance
5 with respect to, I'm assuming, each further processing
6 that went before the BZA. So, certainly, if they had
7 done that and they had done it on the basis of
8 averaging, and if the BZA had found compliance, then
9 certainly they would be in a position to believe that
10 would be the interpretation that we carry forward. So
11 if in fact compliance was proven in the way I'm
12 suggesting, they could demonstrate that to the Zoning
13 Commission.

14 CHAIRPERSON MITTEN: Okay. But based on
15 what we have in -- but is there any opportunity for --
16 I mean what I don't -- what I really, really don't
17 like is when somebody picks up an order and they read
18 the plain language of it and then somebody goes, "Oh,
19 that's not what it means. It doesn't mean what it
20 says, it means something different." So is there any
21 way -- in the event that there is another way to
22 interpret these words, which should actually be
23 written to say "average" or whatever, is there a way
24 to modify this or amend or change this so that future
25 Zoning Commissions don't pick this up and make the

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1 same --

2 MR. BERGSTEIN: Well, I think you can do
3 that through this order. In other words, the issue
4 has arisen before you.

5 CHAIRPERSON MITTEN: Yes.

6 MR. BERGSTEIN: And it's now ripe for you
7 to determine. And the University has made its
8 position known. You can offer them, if you believe it
9 prudent, the opportunity to show the type of reliance
10 argument -- it's not even a reliance argument, but the
11 fact that the BZA, which is sort of your predecessor
12 body of interpretation, has done another
13 interpretation that you could consider --

14 CHAIRPERSON MITTEN: Okay.

15 MR. BERGSTEIN: -- and give some deference
16 to.

17 CHAIRPERSON MITTEN: Okay.

18 MR. BERGSTEIN: But it's appropriate that
19 if in the course of the further processing an issue of
20 interpretation arises, you can use this order as the
21 opportunity to clarify that for all future further
22 processing.

23 CHAIRPERSON MITTEN: Okay. Okay.

24 COMMISSIONER MAY: Well, if we were to
25 take this case as the opportunity to set the record

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1 straight on this particular matter, then I would think
2 that we need to have further information from the
3 University so that they can in fact make the case,
4 because all they've done is stated it so far.

5 CHAIRPERSON MITTEN: Right.

6 COMMISSIONER MAY: They haven't introduced
7 any kind of evidence that in fact the cap is supposed
8 to be an average, as they have stated.

9 CHAIRPERSON MITTEN: Right. Okay. So we
10 would give them an opportunity if they had evidence
11 that there had been reliance, not just on saying
12 numbers, but that there was this overt knowledge by
13 the BZA that these were averages and that that's what
14 they must have had in mind. So we could give that
15 opportunity and then the parties would respond to
16 that; correct, Mr. --

17 MR. BERGSTEIN: Yes. And I think I used
18 reliance perhaps wrongly, or at least it goes to a
19 separate issue.

20 CHAIRPERSON MITTEN: Okay.

21 MR. BERGSTEIN: The first issue is whether
22 or not the interpretation that the University is
23 proposing is backed by any prior actions by the BZA --

24 CHAIRPERSON MITTEN: Okay.

25 MR. BERGSTEIN: -- so that in fact it's

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1 not a new issue at all but one that the BZA at least
2 addressed, even if circumstantially through its past
3 approvals of compliance.

4 CHAIRPERSON MITTEN: Okay.

5 MR. BERGSTEIN: The second issue is if you
6 believe the interpretation that's being offered is
7 erroneous but that it's plausible enough that the
8 University could have relied on it then engage in
9 substantial compliance with the conditions, you could
10 still find substantial compliance, at least in terms
11 of that there was reliance in this case. And you
12 would not deny the application based upon that good
13 faith reliance, although going forward you would set
14 the record straight by a clarification.

15 CHAIRPERSON MITTEN: Right. I understand
16 that, and I think that your second point has already
17 been -- it's satisfied by the fact that their spring
18 enrollment is below cap, so it's a non-issue in terms
19 of right now. Okay. So I follow you.

20 COMMISSIONER MAY: So we're sort of
21 setting things up so that when Georgetown wants to
22 come for further processings, they're going to come in
23 the spring.

24 CHAIRPERSON MITTEN: Yes. And not only
25 further processings but filing for permits of any

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1 kind.

2 COMMISSIONER MAY: Right.

3 CHAIRPERSON MITTEN: Because if it can be
4 proven that at that point when they were to apply that
5 they were over their cap, the BZA would then be the
6 one determining substantial compliance. Okay. So we
7 have that approach that we'll take to Condition 2.
8 Let's just run through these other ones and see what
9 we want to do about them.

10 Condition Number 3 has to do with the
11 notion that, as articulated in Condition 3, that off-
12 campus housing is a privilege that can be revoked due
13 to student misconduct, and there are three
14 requirements of Condition 3. And the community, their
15 concern is that a representative of the University has
16 expressed that they have -- they don't have any
17 intention of complying with that policy. And in fact
18 what they do sometimes is if someone's been naughty
19 and they're living on campus, then they withdraw the
20 privilege of living in the dorm. Although the
21 University, in response, has said that they have in
22 fact required some students who have lived off campus
23 and who have behavior problems to come back on campus.

24 My thought on the subject is that the
25 focus that the community has placed is on the section

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1 of the introduction that says that off-campus housing
2 is a privilege that can be revoked, but there's no
3 requirement in Condition 3 that it must be revoked,
4 and in fact the introduction just says that it can be,
5 it doesn't say that it will be or must be. So I don't
6 think there is non-compliance with Condition 3 myself.

7 VICE CHAIRMAN HOOD: I don't know if I
8 agree with that, Madam Chair. I think we're getting
9 into semantics and words. Condition Number 3 was put
10 there for a reason, and I just want to see a little
11 more compliance. I was trying not to say nothing
12 because one time we try to enforce something, then I
13 hear it's not in our jurisdiction. I have a problem
14 sitting down here making up conditions and they're not
15 enforced or they're not being abided by, because it's
16 actually a waste of time. But I think we should have
17 further information on Condition Number 3, not just
18 because it doesn't say it must be. We still need, I
19 think, a little more information.

20 CHAIRPERSON MITTEN: Well, let me just
21 walk through. The first paragraph is an introduction.
22 It doesn't say that the University must do anything,
23 okay, it's just an introduction. And then it says --

24 VICE CHAIRMAN HOOD: You're speaking in
25 terms of 3.

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1 CHAIRPERSON MITTEN: Of Condition Number
2 3.

3 VICE CHAIRMAN HOOD: Condition Number 3.

4 CHAIRPERSON MITTEN: The first paragraph.
5 Yes. The Off-Campus Student Affairs Program, that is
6 just an introduction.

7 VICE CHAIRMAN HOOD: Right.

8 CHAIRPERSON MITTEN: Okay. Then, a, it
9 says, "The Applicant shall ensure that the Off-Campus
10 Student Affairs Program is fully funded and staffed."

11 VICE CHAIRMAN HOOD: Wait a minute, Madam
12 Chair, let's go back to the introduction.

13 CHAIRPERSON MITTEN: Okay.

14 VICE CHAIRMAN HOOD: Let's read the whole
15 thing. "The Off-Campus Student Affairs Program
16 implemented and enforced by the Applicant shall
17 specify that off-campus housing is a privilege that
18 can be revoked due to student misconduct, whether a
19 violation occurs on or off campus."

20 CHAIRPERSON MITTEN: Okay. So it shall
21 specify, it shall say, it shall make that statement is
22 what it says.

23 VICE CHAIRMAN HOOD: The Applicant shall
24 specify --

25 CHAIRPERSON MITTEN: You're right.

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1 VICE CHAIRMAN HOOD: -- that off-campus
2 housing is a privilege --

3 CHAIRPERSON MITTEN: Okay.

4 VICE CHAIRMAN HOOD: -- that can be
5 revoked.

6 CHAIRPERSON MITTEN: Right. That can be
7 revoked.

8 VICE CHAIRMAN HOOD: Right.

9 CHAIRPERSON MITTEN: It says they have to
10 say that someplace.

11 VICE CHAIRMAN HOOD: Okay.

12 CHAIRPERSON MITTEN: Okay. You're right,
13 it does specify something that they have to do, they
14 have to say that. And then we go into a and it says
15 that they have to fund that program and the Board of
16 Directors -- "They shall obtain the endorsement of the
17 University's Board of Directors for the Program and
18 the its implementation." They assert that they have
19 done that and the community does not suggest
20 otherwise.

21 VICE CHAIRMAN HOOD: Okay.

22 CHAIRPERSON MITTEN: B, "The Off-Campus
23 Student Affairs Program shall specify the measures
24 that University personnel shall undertake immediately
25 upon receiving a complaint regarding student

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1 misconduct to resolve any objectionable behavior and
2 so forth." And they articulate what they do to comply
3 with that, what measures they take, and I could
4 surmise that the community is not satisfied with the
5 measures, but it doesn't say that the community shall
6 be satisfied with the measures, it just says that they
7 shall specify the measures that they will take. Okay?

8 Then, c, "The Off-Campus Student Affairs
9 Program shall conduct, at least annually, a community
10 education workshop that is mandatory for all students
11 living off-campus," which I believe they represented
12 that they did. And I don't believe the community has
13 asserted that they did not, at least annually, conduct
14 this workshop.

15 So that there is no requirement for them
16 to -- if there's someone who has a behavior problem
17 who's living off-campus, there is no requirement for
18 them to be moved back on campus. I think that's where
19 it gets down to, because I --

20 VICE CHAIRMAN HOOD: Shall specify that
21 off-campus housing is a privilege that can be revoked.
22 Now, if off-campus housing is revoked, then where
23 else do you go if you're still in school?

24 CHAIRPERSON MITTEN: Well, you go back to
25 the dorm is where you go. You go back on campus.

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1 VICE CHAIRMAN HOOD: So there is a
2 mechanism for something being enforced here.

3 CHAIRPERSON MITTEN: There's a mechanism,
4 but they don't -- I think what the community is
5 suggesting is that they have to do that, and there
6 isn't anything in Condition 3 that says that they have
7 to avail themselves of that particular course of
8 action. If you want something else, I'm happy to
9 support a request for something else. I just don't
10 know what that's going to be.

11 VICE CHAIRMAN HOOD: Well, I have one or
12 two -- if these things are not enforced, I don't even
13 -- Condition Number 3 should just be out of there.
14 That's my opinion. And, unfortunately, I didn't sit
15 on that case with the BZA, but if it was put in -- and
16 I think this is a message to all of us. If these
17 things can't be dealt with, we don't need to put them
18 in there. Anyway, that's -- we can go on.

19 CHAIRPERSON MITTEN: Okay. Condition
20 Number 9. This has to do with the reports concerning
21 complaints regarding student misconduct, and I think
22 there were two issues. One is that the information in
23 the reports was inadequate, that's what the assertion
24 is on the community's part, and that the community
25 objected to the fact that the University limited the

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1 content of the reports to students who were living off
2 campus, rather than all students.

3 Given that I don't think we were provided
4 -- and anybody can correct me if I'm wrong -- we
5 weren't provided an example of one of these reports so
6 it's kind of hard to evaluate in the abstract because
7 somebody says, "Well, yes, we did provide the right
8 amount of information and the right level of detail,
9 the appropriate level of detail," and someone says we
10 didn't, so maybe we need to ask for an example of one
11 of these reports.

12 But the community -- or the University has
13 asserted that it's appropriate to limit these reports
14 to the students living off campus because of the
15 pervasive sentiment in the order that the behavioral
16 problems are -- that caused the adverse impact to the
17 community that the BZA sought to address were students
18 living off campus. And I reread the order today, and
19 it is pervasive. It says numerous times that it's not
20 just students, it's students living off campus that
21 are problematic, and I think that's a fair
22 interpretation to have limited the reports to students
23 living off campus. So I need somebody to say
24 something here.

25 COMMISSIONER PARSONS: Well, I'm confused

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1 by it. If you read 6, it --

2 CHAIRPERSON MITTEN: If I read 6 -- 2.6?

3 COMMISSIONER PARSONS: Yes.

4 CHAIRPERSON MITTEN: Okay.

5 COMMISSIONER PARSONS: They're going to
6 maintain a telephone hotline to receive complaints
7 regarding student misconduct.

8 CHAIRPERSON MITTEN: Okay.

9 COMMISSIONER PARSONS: You go to 7,
10 they're talking about complaints regarding students
11 living off campus and their conduct.

12 CHAIRPERSON MITTEN: Okay. Okay.

13 COMMISSIONER PARSONS: So I'm not sure
14 because this entire section of the order, starting
15 with 5, 6, 7, 8, 9, deals with complaints. But,
16 certainly, the thrust of the rest of these conditions
17 deals with not the obnoxious kid coming home at two
18 o'clock in the morning trying to find his dorm in the
19 dark --

20 CHAIRPERSON MITTEN: Right.

21 COMMISSIONER PARSONS: -- but, rather, the
22 student who's living in the community who's doing the
23 same thing --

24 CHAIRPERSON MITTEN: Yes.

25 COMMISSIONER PARSONS: -- or making

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1 obnoxious behavior on his own property or at least a
2 rented property.

3 CHAIRPERSON MITTEN: Right.

4 COMMISSIONER PARSONS: And, of course,
5 none of us sat on this case, so we really are
6 interpreting what was being said.

7 CHAIRPERSON MITTEN: But that's -- I mean
8 anybody should be able to look at the order and read
9 it and understand it.

10 COMMISSIONER PARSONS: Right.

11 CHAIRPERSON MITTEN: So it's --

12 COMMISSIONER PARSONS: I would agree with
13 you that the thrust of what I see here has to do with
14 off-campus housing, not kids walking the street or
15 making noises out of their dormitory window. And
16 remembering news accounts of the case, that seemed to
17 be where the most of the complaints were coming from.

18 So I would agree with you, but I'm not sure the order
19 is clear enough to draw that conclusion because of
20 Number 6.

21 CHAIRPERSON MITTEN: I take your point
22 about Number 6. So they have to go to some effort to
23 divide the report.

24 COMMISSIONER PARSONS: When you think
25 about the complaint of a group of students, potential

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1 students or possible students at the corner of 35th
2 and O, is of no use to the University if they get it
3 Sunday morning after a Saturday night incident.

4 CHAIRPERSON MITTEN: Right.

5 COMMISSIONER PARSONS: So the specificity
6 of the address --

7 CHAIRPERSON MITTEN: Right.

8 COMMISSIONER PARSONS: -- is the only
9 thing that makes sense here.

10 CHAIRPERSON MITTEN: Yes. Anybody else?
11 So what's the consensus here then on Condition 9?

12 COMMISSIONER HANNAHAM: I don't have
13 anything to contribute to consensus yet, I'm still
14 puzzling through this.

15 CHAIRPERSON MITTEN: Okay.

16 COMMISSIONER HANNAHAM: The reports that
17 are produced they contain summary information
18 regarding a number of hotline complaints and confirmed
19 incidents. The reports contain --

20 CHAIRPERSON MITTEN: Where are you reading
21 from?

22 COMMISSIONER HANNAHAM: This is the
23 University's statement regarding compliance.

24 CHAIRPERSON MITTEN: Okay.

25 COMMISSIONER HANNAHAM: And, you know, it

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1 refers to the Office of Off-Campus Student Life
2 maintains records of off-campus student conduct-
3 related issues and sends these reports. It doesn't
4 say students living off campus, it says off-campus
5 student conduct-related issues. And hotline
6 complaints, certainly, are not going to be limited to
7 students living off campus either. And the
8 implication is that their reporting actually is about
9 off-campus behavior.

10 I mean the crux of the matter is that what
11 they're looking for is a reporting method that
12 addresses how well the students behave when they're
13 off campus, whether they live off campus or not. I
14 don't think that there's -- it's not clear to me that
15 they are or they aren't reporting about students who
16 live on campus who may be involved in off-campus
17 events. I mean, as I said, certainly, the hotline
18 calls are going to be neutral as to whether a student
19 lives off campus or not.

20 CHAIRPERSON MITTEN: Right. I think the
21 thing that confirms that it relates only to students
22 living off campus is the University's response on
23 February 6, on Page 6, under the italics, under the
24 indented part, "Given the context in which the BZA
25 imposed Condition 9, the University has appropriately

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1 read it to relate to the conduct of students living
2 off campus. Therefore, the University has, therefore,
3 not provided information on the misconduct of students
4 living on campus in residence halls." So they're
5 saying, they're confirming --

6 COMMISSIONER HANNAHAM: Okay. All right.

7 CHAIRPERSON MITTEN: -- what the community
8 has said.

9 COMMISSIONER HANNAHAM: I like their first
10 statement better.

11 CHAIRPERSON MITTEN: Well, sometimes when
12 you get clarification it's not always what you
13 expected.

14 COMMISSIONER HANNAHAM: That's true.

15 CHAIRPERSON MITTEN: So what does that
16 lead you now that you've got all that? We can mull
17 that over --

18 COMMISSIONER HANNAHAM: At least we wanted
19 to have a copy of the report.

20 CHAIRPERSON MITTEN: Okay. Let's get a
21 copy of the report. Since we're getting something
22 else that we needed, let's get the most current copy
23 -- the copy of the most current report that's
24 referenced in Condition 9.

25 Okay. Condition 14. This has to do with

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1 motor vehicle registration, and we got a sentence-by-
2 sentence explanation for what the University does.

3 VICE CHAIRMAN HOOD: Is this the one where
4 I was reading, I think it was from the community,
5 where a question was asked in a meeting, I think it
6 was Burlieith Citizens' Association, where they asked
7 for this information and they were told that they
8 didn't have it? Is this the condition? I believe
9 this is, 14.

10 CHAIRPERSON MITTEN: I don't --

11 VICE CHAIRMAN HOOD: I know it was
12 mentioned at a community meeting, asked to the
13 University.

14 CHAIRPERSON MITTEN: This has been
15 mentioned numerous times, so that might be what you're
16 thinking of.

17 VICE CHAIRMAN HOOD: But they asked the
18 University for showing them that they were in
19 compliance with this or showing them evidence that
20 they even dealt with it, and they were told that they
21 didn't -- the University said they didn't have the
22 information. And it's funny, and I was just wondering
23 how it appeared for us all of a sudden. If that's the
24 case, I may be incorrect. I stand to be corrected.

25 CHAIRPERSON MITTEN: I think there's an

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1 ongoing concern by the community that you can --
2 that's evidenced by particularly the Burlieth
3 Citizens' Association submission, that there are
4 student vehicles -- students who are residing in the
5 District of Columbia from elsewhere who are not
6 commuters, and that they have a requirement to
7 register their cars with the District of Columbia or
8 get a reciprocity sticker and they haven't done that.

9 And that was what Condition 14 was meant to address.

10 And so there's an ongoing concern with that, so then
11 it's a question of, okay, well, if that's what
12 Condition 14 was meant to address, is the University
13 in fact out of compliance with Condition 14?

14 So I do have a question, and I'm glad we
15 have the opportunity to get more information on this
16 particular one as well, which is if you walk through
17 this, the missing piece of information that we do not
18 have is that -- and I'm reading from the top of Page 4
19 of the University's response on February 6. It says,
20 "The University representatives have corresponded and
21 met with officials of the Department of Motor Vehicles
22 to discuss the University's compliance with Condition
23 14 and have been informed that the steps that the
24 University has taken meet and exceed the expectations
25 of the Department," okay?

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1 Now, that's supposed to be to meet the
2 requirement to consult with the D.C. Department of
3 Motor Vehicles to determine whether such registration
4 is completed or such stickers are obtained. It's not
5 for the University to tell DMV what they're doing,
6 it's for DMV to tell them what's not -- if people are
7 not registered. So what we don't know is is DMV
8 telling them? Because if DMV is telling them, then
9 the University has this obligation to act.

10 VICE CHAIRMAN HOOD: Let me ask a
11 question: Who faxes this list of -- it looked like
12 the University faxed us a list of out-of-state --

13 CHAIRPERSON MITTEN: Well, that's actually
14 part of two different submissions. That's attached to
15 the Burlieth Citizens' Association submission, and
16 then it's attached again to the University's --

17 VICE CHAIRMAN HOOD: Oh, it's all
18 together, so I figured this came from the Applicant's
19 counsel.

20 CHAIRPERSON MITTEN: But the original
21 source of it, I think, is --

22 VICE CHAIRMAN HOOD: Okay.

23 CHAIRPERSON MITTEN: -- Burlieth
24 Citizens'. So that's what I want to know. I want to
25 know is DMV telling the University -- maybe I should

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1 ask first, has the University asked DMV for a report
2 regarding compliance by its students, and has
3 information been forthcoming, because that's what
4 triggers the action on the part of the University?

5 VICE CHAIRMAN HOOD: But where we get that
6 information from that you're -- are we getting that
7 out of the --

8 CHAIRPERSON MITTEN: I'm reading the third
9 sentence of Condition 14.

10 VICE CHAIRMAN HOOD: That came from --

11 CHAIRPERSON MITTEN: Well, I'm looking at
12 --

13 VICE CHAIRMAN HOOD: But I'm saying on the
14 front, that's from who?

15 CHAIRPERSON MITTEN: This is from the
16 Applicant.

17 VICE CHAIRMAN HOOD: Will DMV send us
18 anything?

19 CHAIRPERSON MITTEN: Well, it doesn't
20 matter. What we're asking the University to represent
21 to us did they ask DMV and did DMV give them anything?

22 VICE CHAIRMAN HOOD: Well, not that I
23 don't trust anybody, but people can write things the
24 way they want to and present to us any old kind of
25 way.

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1 CHAIRPERSON MITTEN: Well, and it's for us
2 to be discerning consumers of this information. We
3 can ask -- do you want Mr. Bastida to contact DMV?

4 VICE CHAIRMAN HOOD: I don't want to go
5 outside of the campus -- the order.

6 CHAIRPERSON MITTEN: We're not. DMV is
7 involved in --

8 VICE CHAIRMAN HOOD: So if not, let's go
9 to DMV ourselves and then we get to the bottom of it.

10 CHAIRPERSON MITTEN: Mr. Bastida, you got
11 that note?

12 SECRETARY BASTIDA: Yes, Madam Chairman.
13 Sometimes it's difficult to get a written report from
14 DMV, but I probably can get a --

15 VICE CHAIRMAN HOOD: We haven't even tried
16 yet. We need to try first.

17 SECRETARY BASTIDA: Yes, I will try, but
18 I'm sure I can get at least a verbal one and then give
19 them a deadline to put it in writing.

20 CHAIRPERSON MITTEN: Okay. And we also
21 would like the University to address the question of
22 what did they ask of DMV and was the DMV forthcoming
23 with any information?

24 MR. BERGSTEIN: Madam Chair, I'll be glad
25 to facilitate that. As you may know, I also provide

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1 legal advice to DMV.

2 CHAIRPERSON MITTEN: Oh, that's right.

3 MR. BERGSTEIN: And I will facilitate
4 that.

5 CHAIRPERSON MITTEN: That would be
6 fabulous. Okay. So now if we're taking this approach
7 where we're going to allow the University to provide
8 us some additional information, and this is before we
9 determine compliance, then we won't be able to take it
10 up at our March 10 meeting, because we need to allow
11 time for responses and then -- submissions and then
12 responses and so forth. So, Mr. Bastida, do you have
13 some dates to suggest?

14 SECRETARY BASTIDA: Give me a moment,
15 Madam Chair. I would like to find out from the
16 University how long will it take them to put this
17 information together?

18 MR. GROSS: Madam Chair, members, Ned
19 Gross, Arnold & Porter for the University. Two weeks
20 we can provide that.

21 CHAIRPERSON MITTEN: Okay.

22 SECRETARY BASTIDA: And at this time, you
23 will serve it to all the parties?

24 MR. GROSS: Yes.

25 SECRETARY BASTIDA: Okay. I would like to

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1 find out of ANC, which has representative here --
2 you're not a representative of ANC? Then two weeks
3 from today will make it the 10th of March, and then I
4 would allow three weeks for the ANC to make their
5 report to the Office. And that means that I could
6 then, if everything works out, have it for the April
7 14 meeting.

8 CHAIRPERSON MITTEN: Okay. So that's the
9 31st then would be the deadline for parties?

10 SECRETARY BASTIDA: Yes. That would be
11 appropriate. And then that way we could give the ANC
12 as much time as possible. And then I would like to
13 suggest that those should be filed -- the University
14 will file and serve on the parties on Monday the 10th
15 of March by three o'clock in the afternoon, and then
16 the ANC will serve it on the Commission on Monday,
17 March 31 by three o'clock.

18 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

19 SECRETARY BASTIDA: Also, Madam Chairman,
20 if you're going to open the record then, can we have
21 also open the record to allow for the ANC to submit a
22 draft order?

23 CHAIRPERSON MITTEN: The ANC isn't going
24 to submit a draft order.

25 SECRETARY BASTIDA: The ANC -- I mean,

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1 excuse me, the Citizens' Association to submit a draft
2 order.

3 CHAIRPERSON MITTEN: Sure.

4 SECRETARY BASTIDA: Okay. In fact, they
5 have faxed it to me, so I can put it into the record
6 immediately.

7 CHAIRPERSON MITTEN: Okay.

8 SECRETARY BASTIDA: Okay.

9 CHAIRPERSON MITTEN: Thank you.

10 SECRETARY BASTIDA: Thank you, Madam
11 Chairman.

12 CHAIRPERSON MITTEN: Okay. Now, moving on
13 at lightening speed, Zoning Commission Case Number 02-
14 43, which is MedStar, and we need to reopen the record
15 for a revised finding of fact from the Applicant. Is
16 there any objection to reopening the record to receive
17 that? All right. Without objection then. And Mr.
18 Bergstein, I'm just going to ask you to highlight
19 Condition 13 and tell us the -- give us the import,
20 please.

21 MR. BERGSTEIN: The import is that
22 normally a condition in a PUD order would indicate
23 that the second stage final PUD is valid for a period
24 of two years during which time an application for a
25 building permit must be filed and then construction

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1 must begin within the third year.

2 The draft order I received from the
3 Applicant indicated that, but it raised an issue in my
4 mind because this PUD concerns multiple buildings, and
5 I wanted to be sure whether or not the import of the
6 condition would be that once the first building permit
7 was filed, that that would, in essence, vest the PUD
8 for all future buildings without any apparent time
9 limitation.

10 And based on that conversation, you
11 received a revised condition which indicated that in
12 fact the filing of the building permit within two
13 years and beginning construction in the third would
14 vest the PUD but only for a 15-year period, during
15 which time the remaining projects could receive
16 building permits. But that if a building permit was
17 not filed with respect to any of the projects after
18 the 15 years, then the PUD would no longer be alive
19 with respect to them, unless an extension was granted.

20 CHAIRPERSON MITTEN: Okay. Thank you.
21 Okay. So we have the proposed condition before us.

22 COMMISSIONER PARSONS: Madam Chairman, I
23 think that ten years is an absolute limit for this.
24 We have kind of treated this as though it was a PUD
25 and Campus Plan, if you will, and our Campus Plans are

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1 always ten years, our PUDs are never more than two or
2 three, so I think ten years is where we should be
3 instead of 15.

4 CHAIRPERSON MITTEN: Okay. I want to ask
5 Mr. Bergstein a question. I don't remember the
6 precise -- there was, I want to say, like five
7 projects out of a total of seven or -- all the
8 possible projects were not included in the second-
9 stage application, and there were one or two that were
10 held out. And if at some point in the future the
11 Applicant comes forward with another second-stage
12 application -- there were projects in the first-stage
13 application that were not included in this second-
14 stage application. So if the Applicant comes forward
15 with these other projects at some time in the future
16 with a second-stage application, could we revisit the
17 time from the ten years, I guess is -- if we do ten
18 years?

19 MR. BERGSTEIN: Well, I'm wondering, and I
20 can't recall the first-stage order, but I believe the
21 first-stage order had the normal one-year time period
22 to file the second-stage PUD. So that if they came
23 forward with new projects, in essence, they'd have to
24 file a new consolidated PUD for those projects.

25 CHAIRPERSON MITTEN: Okay.

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1 MR. BERGSTEIN: Because the first stage
2 has been satisfied to the extent they've come forward
3 with a second stage.

4 CHAIRPERSON MITTEN: Okay.

5 MR. BERGSTEIN: But then that's it.

6 CHAIRPERSON MITTEN: Okay. So when we
7 think of this, we think of this as those projects in
8 the second-stage -- in this second-stage application,
9 not the totality of the projects that were potentially
10 contemplated in the first-stage approval. Is that
11 right?

12 MR. BERGSTEIN: That's right. They would
13 have to seek -- before the end of the year for the
14 first-stage approval, they would, in essence, need to
15 seek an extension of the first stage to cover any
16 additional project not covered within this second
17 stage in order to keep the possibility coming back
18 with just a second-stage PUD alive with respect to
19 those.

20 CHAIRPERSON MITTEN: I'm with you. Okay.
21 Then I would agree with Mr. Parsons that ten years is
22 an outside limit.

23 COMMISSIONER MAY: Can I ask a question.
24 At the end of ten years, what is the zoning on the
25 property going to be?

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1 CHAIRPERSON MITTEN: It remains --

2 COMMISSIONER MAY: It reverts back to --

3 CHAIRPERSON MITTEN: No. As long as the
4 improvements that were permit -- actually, Mr.
5 Bergstein, you answer this, because I'll probably say
6 something wrong, and then you'll have to correct me
7 and it will be very embarrassing. So you answer it.

8 MR. BERGSTEIN: I'm thinking. The map
9 amendments relate to the specific uses that are
10 authorized only. So the map amendment allows those
11 specific uses but not any other uses. In other words,
12 if they wanted to proceed with any other project
13 that's not covered within the second stage, it would
14 be the matter of right underlying zoning which would
15 apply. This did not remove the underlying zoning.
16 This is PUD-related map zoning. So the second stage
17 -- the map amendment applies to those second-stage
18 projects. It allows them to get a building permit
19 based upon that underlying zoning. But it does not
20 apply to any other projects that are not included
21 within the second stage. As to those, the existing
22 underlying zoning would apply.

23 COMMISSIONER MAY: Okay. So the short
24 answer is that after ten years, or whenever the PUD
25 runs out, it, in effect, reverts back to the

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1 underlying zoning.

2 MR. BERGSTEIN: No.

3 COMMISSIONER MAY: Once the PUD runs its
4 course.

5 MR. BERGSTEIN: Any reversion would occur
6 if the PUD uses ceased and then with respect to those,
7 the map would revert back. But the underlying zoning
8 remains valid with respect to any matter-of-right uses
9 other than those in the second stage. I don't know if
10 I'm making myself clear, but there's two scenarios.

11 COMMISSIONER MAY: Okay. I think I -- I'm
12 not sure I fully understand what will happen, but what
13 I thought might happen isn't going to, so I'm
14 satisfied. Thank you.

15 CHAIRPERSON MITTEN: Mr. Parsons, could I
16 get you to put your recommendation in the form of a
17 motion? Okay. The motion might be something like
18 that we approve Zoning Commission Case Number 02-43
19 with an amended Condition 13 to specify that the order
20 will be effective for ten years.

21 COMMISSIONER PARSONS: Well, you didn't
22 want to get specific to this particular language
23 that's been shown to us?

24 CHAIRPERSON MITTEN: Yes. Basically, with
25 that language except modifying the last line so that

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1 it says ten years instead of 15.

2 COMMISSIONER PARSONS: Yes. Yes. I
3 second that motion as I would have made it the same
4 myself.

5 CHAIRPERSON MITTEN: But more
6 articulately, I'm sure. Okay. Any further
7 discussion? All those in favor please say aye. Those
8 opposed please say no.

9 (Commission members vote.)

10 CHAIRPERSON MITTEN: Ms. Sanchez?

11 MS. SANCHEZ: Staff would record the vote
12 five to zero to zero. Commissioner Mitten moving,
13 Commissioner Parsons seconding, Commissioners
14 Hannaham, May and Hood in favor of approving Case
15 Number 02-43 with the amendment to Condition Number 13
16 for an effective period of ten years.

17 VICE CHAIRMAN HOOD: Madam Chair, are we
18 going to subtract the five years that it's been here
19 in front of the Commission?

20 CHAIRPERSON MITTEN: Yes. That's why we
21 limited it to ten.

22 (Laughter.)

23 That's why we limited it to ten instead of
24 15, because they used up five already with us.

25 VICE CHAIRMAN HOOD: One last time I had

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1 to take that opportunity.

2 CHAIRPERSON MITTEN: Do you promise that
3 it's the last time?

4 VICE CHAIRMAN HOOD: Maybe.

5 COMMISSIONER PARSONS: I think he referred
6 to this case earlier.

7 CHAIRPERSON MITTEN: Yes, he did.

8 Okay. Zoning Commission Case Number 01-
9 31TE, et cetera, which is the Florida Rock case --
10 Florida Rock PUD. We had voted in January to
11 reconsider, so we've agreed that we will reconsider,
12 and tonight is the night that we are going to
13 reconsider. And we have a submission from the
14 Applicant that includes some amended design guidelines
15 in response to the discussion at our January meeting,
16 and I just -- we had asked for a response from OP as
17 well, and I just want to know, did you work with the
18 Applicant on these, and did you have a separate
19 response?

20 DIRECTOR ALTMAN: Yes, we did, and we're
21 handing out to the Commission a very brief synopsis of
22 it. But, essentially, what they've submitted reflects
23 the work that we've done with them.

24 CHAIRPERSON MITTEN: So do we need to have
25 a summary from you or it would just be redundant?

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1 DIRECTOR ALTMAN: It would be redundant.

2 CHAIRPERSON MITTEN: Okay.

3 DIRECTOR ALTMAN: We support what they've
4 submitted.

5 CHAIRPERSON MITTEN: Okay.

6 MS. MCCARTHY: Right. Essentially, they
7 kept all of the favorable aspects of the proposal that
8 the Commission, I think, recognized and commented on
9 favorable the last time. And the major objection that
10 the Commission had was on the height side, so they've
11 reduced the height from 130 to the 110, reduced the
12 110-foot ones to 100 and then left the 90-foot
13 buildings at 90 feet.

14 CHAIRPERSON MITTEN: Okay. Since it's
15 getting late, we're just going to cut to the chase.
16 What do you think, John?

17 COMMISSIONER PARSONS: Well, I just wanted
18 to say, again, I'm still not happy with the heights
19 that we agreed to, but life is a compromise. I'm also
20 disappointed that my suggestion that maybe the
21 original PUD amenity site be included again in this
22 project, not for residential but for some other
23 purpose, and they've pulled of the table. So I'm not
24 sure that the amenities that I would expect in a
25 project of this size are included in this package at

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1 this time, but it's just a signal to the response. So
2 I'm ready to proceed.

3 CHAIRPERSON MITTEN: Okay. And I just
4 would say, too, that this is -- these are guidelines
5 for a revised application to the first stage that will
6 come back to us. This is not an equivalent of a first
7 stage, so I think we gave them -- expressed our
8 concerns about -- you had expressed your concerns
9 about the amenities site, the former amenities site,
10 and then also the issue about height and to the extent
11 that the Commission views that as substantial relief,
12 that they would look for substantial amenities to
13 offset that.

14 So I would move that we then extend the
15 first-stage approval for one year for the Florida Rock
16 PUD with the provision that the Applicant would return
17 to us within that one year with an amended first-stage
18 application that reflects the design guidelines
19 attached to their February 14, 2002 letter. Is there
20 a second?

21 COMMISSIONER PARSONS: Anthony's got to
22 second this. I can't do it.

23 VICE CHAIRMAN HOOD: Second.

24 CHAIRPERSON MITTEN: Any further
25 discussion?

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1 COMMISSIONER MAY: Yes. I'd like to state
2 that I have read up on this since the last time we
3 discussed this, and I would also like to signal my
4 concerns about the development of the project, the
5 heights, the design for the complex and look forward
6 to seeing a new and better first-stage application.

7 CHAIRPERSON MITTEN: Okay. Anybody else?
8 All those in favor, please say aye. Those opposed,
9 please say no.

10 (Commissioners vote.)

11 CHAIRPERSON MITTEN: Thank goodness. Ms.
12 Sanchez?

13 MS. SANCHEZ: Staff will record the vote
14 five to zero to zero. Commissioner Mitten moving,
15 Commissioner Hood seconding. Commissioners Hannaham,
16 May and Parsons in favor of first stage -- excuse me,
17 extension of the first-stage PUD for one year and with
18 the condition that they will return with an amended
19 first-stage guidelines.

20 CHAIRPERSON MITTEN: Thank you.

21 We're ready to go to the consent calendar,
22 and I would just ask Mr. Bastida to give us the cliff
23 notes version of the consent calendar.

24 SECRETARY BASTIDA: Yes, Madam Chairman.
25 There are six minor modifications to be done for the

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1 printing of the zoning regulations. We are hoping
2 that it will be sent to the printer this Friday.
3 These changes are not related to what appear presently
4 on the regulations but is related to Mr. Philson,
5 which is the register to the final rulemaking. And
6 these are changes necessary to make sure that in fact
7 the new version of the CMR-11 really is identical to
8 what is presently being known to the public. And that
9 is a very succinct presentation. If you'd like me to
10 go step-by-step, I'll be glad to do so.

11 CHAIRPERSON MITTEN: Does anyone need a
12 step-by-step explanation? I don't think so. Say
13 again? Okay. Then I would move approval of the minor
14 modifications that are included in the draft order,
15 00-04TA.

16 COMMISSIONER MAY: Second.

17 CHAIRPERSON MITTEN: All those in favor
18 please say aye. Those opposed please say no.

19 (Commission members vote.)

20 CHAIRPERSON MITTEN: Ms. Sanchez?

21 MS. SANCHEZ: Staff would record the vote
22 five to zero to zero. Commissioner Mitten moving,
23 Commissioner May seconding, Commissioners Hannaham,
24 Hood and Parsons approving the minor modifications in
25 Case Number 00-04.

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1 CHAIRPERSON MITTEN: Thank you. We have a
2 piece of correspondence that wanted to respond to, and
3 that is a motion from the Corcoran Mews Condominium
4 Association to reconsider the Notre Dame case, which
5 was Zoning Commission Case Number 02-25.

6 First, I would say that motions can only
7 be presented to the Commission by parties, and the
8 issue -- what's at issue here is that the folks who
9 have written to us had said that they didn't get
10 proper notice. And I would just -- I would welcome
11 any other comments from the Commission, but this was
12 an issue that we visited during the hearing, because
13 people have come and said that they didn't get their
14 notice even though they were within 200 feet, and we
15 discussed that at length. We left the record open
16 specifically to allow these folks to go back to the
17 ANC and they in fact convinced the ANC to change their
18 vote and so forth.

19 So I think we had considered their
20 concerns about notice during the hearing, and I don't
21 think there's any further action to be taken by the
22 Commission at this point, unless someone else has a
23 proposal to make.

24 COMMISSIONER MAY: No, I agree, Madam
25 Chair.

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1 COMMISSIONER PARSONS: I agree.

2 VICE CHAIRMAN HOOD: I agree.

3 CHAIRPERSON MITTEN: All right. Okay.

4 Couple things. One is we have the minutes left over
5 to do.

6 SECRETARY BASTIDA: If you want, you can
7 do that on the March meeting.

8 CHAIRPERSON MITTEN: Yes, let's do that.

9 SECRETARY BASTIDA: Yes. And the only
10 thing that you have is the remaining Item C that is
11 the elections of --

12 CHAIRPERSON MITTEN: We also have to ask
13 --

14 SECRETARY BASTIDA: You can always do that
15 --

16 CHAIRPERSON MITTEN: -- the Office of
17 Planning if they would be --

18 SECRETARY BASTIDA: Oh, I'm sorry. I'm
19 sorry. That's right.

20 CHAIRPERSON MITTEN: -- hurt if we did not
21 hear their status report this evening.

22 MS. MCCARTHY: I believe the Office of
23 Planning's report is crystal clear and probably can
24 speak for itself.

25 CHAIRPERSON MITTEN: Okay. Well, if we

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1 have any questions, we'll ask you in two weeks.

2 VICE CHAIRMAN HOOD: Madam Chair, I did
3 want to thank the Corporation Counsel for giving us --
4 Mr. Bergstein for giving us this letter I asked about
5 for the generalized land use maps and was it adopted
6 and approved. Just wanted to thank him for that.

7 MR. BERGSTEIN: You're welcome.

8 SECRETARY BASTIDA: Madam Chairman, do you
9 have the other business, the new cases filed, others
10 published and then Item C, election of officers?

11 CHAIRPERSON MITTEN: Yes.

12 SECRETARY BASTIDA: If you want, you can
13 do the election of officers today or we can do it
14 first thing at the meeting on the 10th.

15 CHAIRPERSON MITTEN: It will go a lot
16 quicker if we just do it now.

17 SECRETARY BASTIDA: Oh, I'm sure. Thank
18 you.

19 VICE CHAIRMAN HOOD: Yes. If it's open,
20 I'd like to nominate myself. Actually, I would --

21 CHAIRPERSON MITTEN: You can have it.

22 VICE CHAIRMAN HOOD: -- like to -- this is
23 just my opinion, I would like to see us keep as it is.

24 I think that Carol has done a great job being the
25 Chair, even though I don't agree with her most of the

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1 time. But I think she's doing a good job. And
2 unless, Mr. Hannaham, you would like to serve as Vice
3 Chair or someone else, I will step aside. If not, I
4 would like to see us continue as we are.

5 COMMISSIONER PARSONS: No, thank you.

6 CHAIRPERSON MITTEN: I think we have a
7 great setup here, I think we have a great team of
8 people, and I'm happy to continue as Chair, and I'm
9 glad that you have the confidence in me to do that.
10 So if we can just do this by consensus.

11 COMMISSIONER PARSONS: You don't want a
12 move with the status quo?

13 CHAIRPERSON MITTEN: No, that sounds bad.
14 So we'll just keep things as they are and I will
15 remain as Chair and Mr. Hood as the able Vice Chair.
16 And if there's no other business this evening, Mr.
17 Bastida, I now declare our public meeting adjourned.

18 (Whereupon, at 10:04 p.m., the Zoning
19 Commission meeting was concluded.)
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